

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C. 43, AS AMENDED

**MOTION RECORD
(Returnable Friday, November 28, 2014)**

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AND TO: THIS HONOURABLE COURT

Court File No.CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O. 1990 c. C. 43, AS AMENDED

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Court File No. CV13-10331-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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SUN PAC FOODS LIMITED

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C. 43, AS AMENDED

NOTICE OF MOTION

BDO CANADA LIMITED ("**BDO**" or the "**Receiver**"), in its capacity as receiver of the assets, undertakings and properties of Sun Pac Foods Limited (the "**Debtor**") will make a Motion before a Judge to be heard on **Friday, November 28, 2014**, at 10:00 a.m. or as soon after that time as the Motion can be heard at the Court House, 330 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD FOR HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. If necessary, an Order abridging the time for service and validating service of this Notice of Motion and Motion Record in the manner effected by the Receiver and an Order dispensing with service thereof of any party other than the parties served;

2. an Order approving the Third Supplement to the First Report of the Receiver and the actions of the Receiver described therein;
3. an Order approving the Third Report of the Receiver (the "**Third Report**") and the actions of the Receiver described therein;
4. an Order approving the professional fees and disbursements of the Receiver and its legal counsel;
5. an Order approving the Receiver's Statement of Receipts and Disbursements;
6. an Ordering authorizing and directing the Receiver to make a distribution to 8527504 Canada Inc. ("**852**") and maintain a reserve holdback in accordance with paragraph 7 of the Third Report; and
7. such further and other relief as to the Receiver may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. By Order of the Honourable Madam Justice Mesbur dated November 12, 2013 (the "**Receivership Order**"), BDO was appointed as the receiver of all of the assets, undertakings and properties acquired for and used in relation to a business carried on by the Debtor including all proceeds thereof with authority limited to the provisions of the Receivership Order.
2. The largest secured creditor of the Debtor is 8527504 Canada Inc. ("**852**"). 852 was owed approximately \$3,100,000.00 as at the date of the Receivership Order. Menkes GTA Industrial Holdings Inc. ("**Menkes**") and Liquibrands Inc.

("Liquibrands") appear to be the other secured creditors of the Debtor. Menkes is owed approximately \$447,491.00 and Liquibrands is owed approximately \$2,700,000.00.

Sale Process

3. Pursuant to a January 9, 2014 Approval Vesting Order granted by Mr. Justice Brown, the Receiver completed the sale of the Debtor's property to Maynards Industries.

Actions Involving Liquibrands

4. Liquibrands has brought a Motion seeking, *inter alia*, an Order that it is entitled to the Additional Surplus Proceeds in priority to 852 (the "**Liquibrands Motion**").
5. 852 opposes the relief being sought by Liquibrands in the Liquibrands Motion.
6. In a separate proceeding, 852 has brought an application to appoint a receiver over all of the properties, assets and undertakings of Liquibrands (the "**852 Application**").
7. Liquibrands is opposing the relief sought by 852 in the 852 Application.
8. The Receiver, 852 and Liquibrands have agreed to have the Liquibrands motion heard on the same day as the 852 Application.

Belgian Orange Juice

9. The Receiver was asked by both 852 and Liquibrands to further elaborate on the circumstances that led to the Receiver's decision to ultimately dispose of certain orange juice.
10. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion: *(list all affidavits or other documentary evidence to be relied on).*

1. The Third Report of the Receiver dated November 25, 2014, and appendices attached thereto.
2. Such further and other material as counsel may produce and this Honorable Court may permit

DATED: November 26, 2014

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Lawyers for the Receiver

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O 1990, c. C. 43, AS AMENDED

**THIRD REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

November 25, 2014

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- A Order of Justice Brown dated June 3, 2014
- B Receiver's Schedule of Receipts and Disbursements
- C Second Report of the Receiver dated April 10, 2014
- D Third Supplement to the First Report dated August 28, 2014
- E Receiver's Fee Affidavit
- F Fee Affidavit of Lipman Zener & Waxaman LLP

INTRODUCTION AND BACKGROUND

Introduction

1. By Order of the Honourable Madam Justice Mesbur made November 12, 2013 (the "Receivership Order") BDO Canada Limited was appointed as Receiver ("BDO" or the "Receiver") over the properties, assets and undertakings (the "Property") of Sun Pac Foods Limited ("Sun Pac" or the "Company") pursuant to the application of 8527504 Canada Inc. ("852").

Purpose of this Report

2. The purposes of this report dated November 25, 2014 (the "Third Report") are to:

- a) seek the Court's approval of the Receiver's Schedule of Receipts and Disbursements;
- b) seek the Court's approval of the distribution of proceeds in the hands of the Receiver to the senior secured creditor 852 and authority and direction to make such distribution;
- c) seek the Court's approval of the fees and disbursements, as set out herein, of the Receiver and its counsel, Lipman, Zener & Waxman LLP ("LZW"); and
- d) inform the Court and seek its approval of the Receiver's activities and conduct since the Second Report of the Receiver dated April 10, 2014 (the "Second Report") as set out in this Third Report and the Third Supplemental Report to the First Report dated August 28, 2014 (the "Third Supplemental Report") .

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Background

3. As per the Order of the Honourable Justice Brown dated June 3, 2014 (the "Distribution and Fee Approval Order"), the following interim distributions have been made by the Receiver:

Canada Revenue Agency (deemed trust payroll deductions)	\$31,352.28
Vacation Pay (deemed trust per ESA)	4,192.06
WEPPA (pursuant to s.81.4 (1) of BIA)	3,103.79
Mercer re: Pension Claim (pursuant to S.81.6(1) of BIA)	<u>55,914.00</u>
	<u>\$94,562.13</u>

A copy of the Distribution and Fee Approval Order is attached hereto as **Appendix A**.

Disclaimer

4. This Third Report is prepared solely for the use of the Court, for the purpose of assisting the Court in making a determination whether to approve the Receiver's proposed distribution, and other relief being sought.

5. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

RECEIPTS AND DISBURSEMENTS

6. Attached hereto as **Appendix B** is the Receiver's Schedule of Receipts and Disbursements ("R&D Statement"). The R&D Statement reports actual receipts over disbursements from November 12, 2013 to November 19, 2014 of approximately

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\$494,813 before provision for payment of outstanding professional fees and a holdback for future professional fees.

INTERIM DISTRIBUTION

7. The Receiver proposes making an interim distribution in the amount of \$454,813 (the "Interim Distribution") as summarized below:

Receipts over Disbursements (Receiver's R&D Statement)	\$494,812.52
Less: Holdback re future professional fees	(40,000.00)
Funds Available for Distribution	<u>\$454,812.52</u>
<u>Proposed Distribution to:</u>	
Professional Fees - Receiver	\$19,013.69
Professional Fees - LZW	15,303.59
8527504 Canada Inc.	<u>420,495.24</u>
Total Distribution	<u>\$454,812.52</u>

8. 852 is the Company's senior secured lender as more fully described in Paragraphs 11 to 15 of the Second Report. 852 was owed approximately \$3.1 million by Sun Pac at the receivership date. Recovery from all of the Company's Property has yielded a significant shortfall to 852. No other creditor ranking in priority to 852 with respect to the proceeds is affected by the Receiver's proposed distribution.

9. The Receiver has obtained an independent security opinion on the validity and enforceability of 852's security. A copy of the security opinion was attached as Appendix D to the Second Report attached hereto as Appendix C.

LOSSES FOR TAX PURPOSES

10. As more fully described in Paragraphs 43 through 46 of the Second Report, there could be \$30.5 million of losses that could be of interest to potential purchasers.

11. The Receiver is advised by Bridging Capital (defined in Paragraphs 11 and 12 of the Second Report) that it continues to have ongoing discussions with parties interested in entering into a transaction that would allow Sun Pac to receive value for its losses which may require the Receiver in the future to 1) file a Proposal under the *Bankruptcy and Insolvency Act* ("BIA") on behalf of the Company; and 2) file the Company's corporate income tax return for fiscal 2013.

12. Accordingly, the Receiver is requesting a reserve to be held in the amount of \$40,000 in respect of future professional fees that may have to be incurred for Sun Pac to receive value for its losses.

ACTIVITIES OF THE RECEIVER

13. The following are the activities of the Receiver since the issuance of the Distribution and Fee Approval Order:

- (a) finalizing the Second Report;
- (b) filing statutory government returns;
- (c) paying outstanding operating expenses;
- (d) reviewing and commenting on a supplement to the Second Report in response to Liquibrands Inc.'s (defined below) motion, seeking among other things, an Order (i) lifting the stay of proceedings in the Bridging Action (as defined in Paragraphs 48 and 49 of the Second Report), and (ii) declaring

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that it is entitled to the Surplus Proceeds in priority to 852 (the "Liquibrands Motion");

- (e) making the distributions as set out in Paragraph 3 above; and
- (f) filing the requisite report(s) pursuant to S. 246(2) of the BIA.

14. In addition, the Receiver was asked by both Liquibrands Inc. (the sole shareholder of Sun Pac and subordinate secured creditor) and 852 to further elaborate on the circumstances surrounding certain Brazilian orange juice as discussed in Paragraph 34 of the First Report of the Receiver dated January 3, 2014. The Receiver and its counsel spent considerable time in dealing with this matter with respective counsel including the preparation of a Third Supplemental Report dated August 28, 2014. A copy of the Third Supplemental Report is attached hereto as **Appendix D**.

FEES AND DISBURSEMENTS

15. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements which are more particularly described in the affidavit and detailed invoices attached hereto as **Appendix E**.

16. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

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17. Additionally, the Receiver has incurred legal fees of its counsel, LZW, in respect of these proceedings as per the fee affidavit and exhibits attached hereto as Appendix F.

18. The Receiver has reviewed LZW's fee affidavit and believes same to be fair and reasonable in the circumstances.

19. The Receiver requests that the Court approve its interim accounts from March 31, 2014 to November 25, 2014 in the amount of \$41,613.69, inclusive of HST of \$4,787.42.

20. The Receiver also requests that the Court approve the accounts of its legal counsel for the period March 27, 2014 to November 25, 2014 in the amount of \$28,861.77, inclusive of HST of \$3,305.77.

21. Additional time will be required to complete the Receiver's mandate.

SUMMARY AND RECOMMENDATIONS

22. Based on the foregoing, the Receiver recommends that the Court:
- a) approve this Third Report of the Receiver, and the activities and conduct of the Receiver set out herein;
 - b) approve the Receiver's R&D Statement;
 - c) authorize and direct the Receiver to make the Interim Distribution as recommended herein; and

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- d) approve the professional fees and disbursements of the Receiver and its counsel, LZW, as set out herein.

All of which is respectfully submitted this 25th day of November, 2014.

**BDO CANADA LIMITED Court Appointed Receiver of
Sun Pac Foods Limited**
Per:



Name: Gary Cerrato, CIRP
Title: Vice-President

APPENDIX "A"

Court File No. CV-13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE D. BROWN

)
)
)

TUESDAY, THE 3rd DAY OF
JUNE, 2014

BETWEEN:



8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS AMENDED

ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertakings, properties and assets of Sun Pac Foods Limited (the "Debtor"), for an Order:

- (a) approving the activities of the Receiver as set out in the Second Report of the Receiver, dated April 10, 2014 (the "Second Report") and the Supplement to the Second Report, dated May 29, 2014 (the "Supplement");

- (b) approving the fees and disbursements of the Receiver and its counsel, more particularly described in the Second Report and the Supplement;
- (c) authorizing the Receiver to make an interim distribution with respect to the funds held in connection to the sale of the Debtor's assets, more particularly described in the Second Report;
- (d) such further and other relief as this Honourable Court shall deem just;


ON READING the Second Report, the Supplement and on hearing the submissions of counsel for the Receiver, and such other parties in attendance at the hearing as indicated on the counsel slip.

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record is hereby abridged so that this motion is properly returnable today and further service thereof is hereby dispensed with.
2. THIS COURT ORDERS that, subject to paragraph 8 below, the Second Report and the activities of the Receiver set out therein be and the same are hereby approved.
3. THIS COURT ORDERS that the Receiver's statement of receipts and disbursements, attached as Appendix O to the Second Report is hereby approved.
4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the fee affidavits attached as Appendices P and Q of the Second Report, are hereby approved.
5. THIS COURT ORDERS that the Receiver make the following interim distributions:
 - (i) \$31,352 to Canada Revenue Agency for deemed payroll deductions;
 - (ii) \$4,192.00 for vacation pay;

- (iii) \$3,103.00 for *Wage Earner Protection Program Act* claims; and
 - (iv) \$55,914.00 to Mercer for pension claims.
6. THIS COURT ORDERS that the Receiver retain a reserve and a holdback in the total sum of \$65,600.00.
7. THIS COURT ORDERS that the balance of \$383,381.00 be held by the Receiver in trust subject to further order of this Court.
8. THIS COURT ORDERS that this Order is without prejudice to:
- i) the issues to be determined in the Liquibrands motion dated April 28, 2014 and that Liquibrands is not estopped from advancing any of the claims or arguments set out in its motion material;
 - ii) the plaintiffs' claims in Court File No. CV-13-00492612 (the "492612 Action") and that the plaintiffs are not estopped from advancing any claims or arguments in the 492612 Action notwithstanding that the Action is stayed subject to further order of this Court; and
 - iii) the issues to be determined in the Application having Court File No. CV-14-10543-00CL and that Liquibrands is not estopped from advancing any claims or arguments in the said Application.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 03 2014



8527504 CANADA INC.
Applicant

-and-

SUN PAC FOODS LIMITED
Respondent

Court File No. CV13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at
TORONTO

ORDER

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Lawyers for the Receiver

APPENDIX "B"

Schedule A

Estate No. 32-158650

**IN THE MATTER OF THE RECEIVERSHIP OF
SUN PAC FOODS LIMITED
RECEIVER'S SCHEDULE OF RECEIPTS AND DISBURSEMENTS**

For the Period November 12, 2013 to November 19, 2014

INTERIM STATEMENT

RECEIPTS:		
Cash On Hand	\$	59,383.29
Accounts Receivable		273,337.58
Inventory		
Sun Pac & McDowell Finished Goods & Packaging		42,466.54
Private Label (Sold to Wal-Mart)		33,482.35
Machinery & Equipment (Auction)		918,947.52
Third Party Storage		27,270.66
HST Refunds (pre-receivership)		202,067.10
HST Refunds (post-receivership)		117,370.58
Utilities Refund		8,550.35
Recoverable Expenses paid by Trustee		126.00
Employee Insurance Refunds		1,795.05
Interest Income		2,764.21
HST Collected		3,688.42
<i>Total Receipts</i>	\$	<u>1,691,249.65</u>
DISBURSEMENTS:		
Possession & Occupancy Costs:		
Change Locks	\$	1,395.00
Occupation Rent (February 4, 2014 to March 15, 2014)		319,537.62
Gas		41,105.64
Hydro		110,574.89
Water & Sewer		2,716.56
Telephone/Internet		1,588.24
Repairs & Maintenance		15,622.62
HST Paid		63,989.52
Sub Total		<u>556,530.09</u>
Administration Costs:		
Filing Fees		70.00
Consulting Fees		29,365.88
Post-Receivership Payroll		12,175.36
Freight		9,897.03
Pre-Receivership payroll		5,900.92
Payroll Deductions		4,031.67
Advertising - Sales Process		3,225.06
Travel		1,374.66
Photocopies/Postage on General Correspondence		989.39
IT Costs		756.50
Courier		235.40
Work Place Safety Insurance		406.47
Payroll Services		165.30
Ontario Health Tax		81.59
Bank Charges		160.00
Miscellaneous		66.04
Search Fees		25.00
HST Paid		5,533.79
Sub Total		<u>74,460.06</u>
Inventory Disposal Costs/Clean-Up Costs:		
Lab & Site Clean-up Costs		19,613.10
Inventory Disposal Costs		29,016.80
HST Paid		6,321.89
Sub Total		<u>54,951.79</u>
<i>Total Disbursements:</i>		<u>685,941.94</u>
RECEIPTS OVER DISBURSEMENTS	\$	<u>1,005,307.71</u>
<i>(before professional fees)</i>		
Receivers fees		282,318.60
Legal Fees		85,793.86
HST on Professional Fees		47,821.60
<i>Total Professional Fees</i>		<u>415,934.06</u>
RECEIPTS OVER DISBURSEMENTS	\$	<u>589,373.65</u>
<i>(after professional fees)</i>		
DISTRIBUTIONS		
Deemed Trust:		
Vacation Pay		4,192.06
Receiver General		31,352.28
Service Canada - WEPPA		3,102.79
Pension Claim Secured		55,914.00
Sub Total		<u>94,561.13</u>
RECEIPTS OVER DISBURSEMENTS	\$	<u>494,812.52</u>

APPENDIX "C"

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O 1990, c. C. 43, AS AMENDED**

**SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

April 10, 2014

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APPENDICES

- A** Receivership Order
- B** Receiver's First Report dated January 3, 2014 (excluding appendices)
- C** Affidavit of Len Kofman dated November 12, 2013
- D** Security Opinion of Lipman, Zener & Waxman LLP
- E** Order of Justice Brown dated January 9, 2014
- F** Endorsement of Justice Brown dated January 9, 2014
- G** Endorsement of Justice Brown dated February 8, 2014
- H** Teaser Letter and Distribution List
- I** Bridging Action, CV-13-492612
- J** Riddell Counterclaim, CV-12-445723
- K** Notice of Vacant Possession & Rent Cheque
- L** Canada Revenue Agency Property Claim
- M** Service Canada WEPPA Letters
- N** Mercer Pension Claim
- O** Receiver's Schedule of Receipts and Disbursements
- P** Receiver's Fee Affidavit
- Q** Fee Affidavit of Lipman, Zener & Waxman LLP

INTRODUCTION AND BACKGROUND

Introduction

1. By Order of the Honourable Madam Justice Mesbur made November 12, 2013 (the "Receivership Order") BDO Canada Limited was appointed as Receiver ("BDO" or the "Receiver") over the properties, assets and undertakings (the "Property") of Sun Pac Foods Limited ("Sun Pac" or the "Company") pursuant to the application of 8527504 Canada Inc. ("852"). A copy of the Receivership Order is annexed hereto as **Appendix A**.
2. In accordance with the Receivership Order, the Receiver conducted a sales process (the "Sales Process") to market for sale the Company's Property (as defined in the Receivership Order).
3. A description and the outcome of the Receiver's Sales Process is more fully detailed in the Receiver's First Report and the Confidential Supplement to the Receiver's First Report both dated January 3, 2014 (collectively referred to hereinafter as the "First Report") attached hereto (excluding appendices) as **Appendix B**. Ultimately, the Receiver recommended completing a transaction pursuant to a Liquidation Services Agreement with Maynards Industries Inc. ("Maynards") to have it act as the agent for the Receiver to liquidate Sun Pac's Property by public auction (the "Maynards Transaction").

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Purpose of the Report

4. The purposes of this report dated April 10, 2014 (the "Second Report") are to:
- a) report on the completion of the Maynards Transaction;
 - b) seek the Court's approval of the Receiver's Schedule of Receipts and Disbursements;
 - c) seek the Court's approval of the proposed distributions of proceeds in the hands of the Receiver as set out in the "Distributions" section of this Second Report and authority and direction to make such distributions;
 - d) seek the Court's approval of the fees and disbursements, as set out herein, of the Receiver and its counsel, Lipman, Zener & Waxman LLP ("LZW"); and
 - e) inform the Court and seek its approval of the Receiver's activities and conduct since the First Report as set out in this Second Report.

Disclaimer

5. This Second Report is prepared solely for the use of the Court, for the purpose of assisting the Court in making a determination whether to approve the Receiver's proposed distributions, and other relief being sought. It is based on the Receiver's analysis of information provided to it by the management and directors of Sun Pac, which included unaudited financial statements and internal financial reporting. The Receiver's procedures did not constitute an audit or review engagement of Sun Pac's financial reporting. The Receiver has relied upon the financial statements and

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financial and other records of Sun Pac in reaching the conclusions set out in this Second Report.

6. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

Background

7. Sun Pac is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario). Sun Pac is a privately owned corporation which manufactured juices and sport drinks under the Sun Pac brand and for private label customers. Sun Pac also manufactured croutons and breadcrumbs under the "McDowell Ovens" banner.

8. The Receiver understands that in November 2011, Sun Pac was acquired by Liquibrands Inc. ("Liquibrands"), a private investment firm owned by Csaba Reider, at which time Csaba Reider became President and Chief Executive Officer of Sun Pac. Liquibrands is the sole shareholder of Sun Pac.

9. Sun Pac's head office and manufacturing facility was located at a leased facility municipally known as 10 Sun Pac Boulevard, Brampton, Ontario (the "Premises").

10. Additional background information concerning Sun Pac and the events leading to its receivership proceeding can be found in Paragraphs 3 to 19 of the Affidavit of Len Kofman dated November 12, 2013 annexed hereto as Appendix C.

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852's Security

11. Pursuant to an Amended and Restated Letter Agreement accepted by Sun Pac and Liquibrands on January 18, 2013, (as amended, the "Credit Agreement") Bridging Capital Inc. ("Bridging") provided credit facilities to Sun Pac which were payable on demand and secured, by *inter alia*, a General Security Agreement dated October 1, 2012. Liquibrands guaranteed \$1.0 million, plus interest and costs, of Sun Pac's debt.
12. The Credit Agreement was assigned by Bridging to 852 in May 2013.
13. Sun Pac and 852 entered into a Forbearance Agreement dated September 11, 2013 (the "Forbearance Agreement") pursuant to which, *inter alia*, 852 agreed not to take any further enforcement steps until the earlier of December 9, 2013 or the occurrence of an event of default under the Forbearance Agreement.
14. Sun Pac defaulted on its obligations under the Forbearance Agreement, ceased operations on November 7, 2013 and had previously consented to the appointment of a receiver in the event of a default.
15. By virtue of the Credit Agreement assignment, 852 is the Company's senior secured lender. 852 was owed approximately \$3.1 million at the receivership date.

Security Opinion

16. The Receiver requested that its independent legal counsel, LZW, provide the Receiver with a security opinion on the validity and enforceability of 852's security. A copy of LZW's security opinion is attached hereto as Appendix D. 852 appears, by virtue of a subordination agreement entered into between Liquibrands and Bridging, and subject to the assumptions and qualifications set out in the security opinion, to have a valid and enforceable first ranking security interest against the Property of Sun Pac.

Other Secured Creditors

17. Liquibrands, by virtue of subordinating its security interest in the Property of Sun Pac in favour of Bridging, is a subordinate ranking secured creditor that is owed approximately \$2.7 million.

18. Menkes GTA Holdings Inc. ("Menkes" or the "Landlord") is the Landlord and also, pursuant to various lease amendments and arrangements, is a subordinate ranking secured creditor that is owed approximately \$447,491.

19. The Receiver does not expect to make any distributions to either Liquibrands or Menkes given that the senior secured creditor, 852, will likely suffer a significant shortfall on the loans it advanced to Sun Pac.

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ACTIVITIES OF THE RECEIVER

20. In addition to the initial activities of the Receiver as described in the First Report, the Receiver has engaged in the following activities since that time.

Menkes Litigation

21. In July of 2013, Bridging entered into an "Agreement of Landlord" with Menkes (the "Landlord Agreement") which provided, *inter alia*, that certain Sun Pac assets, as defined in Schedules "A" and "C" of the agreement, would not be deemed fixtures or part of the real estate but would be considered personal property. Additionally, the Landlord Agreement afforded Bridging, or any Receiver (private or Court-appointed) a rent free period for a term of 12 weeks (the "Rent Free Period") to deal with Sun Pac's Property in a security enforcement scenario.

22. On January 8, 2014, the solicitors for Menkes notified the Receiver that Menkes was objecting to the sale by the Receiver of the Ammonia Compressors (defined below) which the Landlord considered fixtures or leasehold improvements and not property owned by Sun Pac.

23. On January 9, 2014, the Honourable Mr. Justice Brown granted an Approval and Vesting Order (the "Approval and Vesting Order") in connection with, *inter alia*, the Maynards Transaction. The Approval and Vesting Order is annexed hereto as Appendix E.

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24. While Mr. Justice Brown approved the Approval and Vesting Order, he ordered, with the consent of the Receiver, Maynards, Menkes and 852 to exclude the Ammonia Compressors (defined below) from the auction sale unless the respective parties reached an agreement with respect to same or until the issue was decided by further order of this Court. A copy of the endorsement is annexed hereto as Appendix F.

25. An agreement could not be reached between 852 and Menkes with respect to the 12 Vilter ammonia compressors that were connected to the freezers used at the Premises to preserve and store frozen juice products ("the "Ammonia Compressors").

26. Menkes not only sought in its responding motion to exclude the Ammonia Compressors from the Receiver's auction sale but also brought a separate motion to invalidate the Landlord Agreement on a legal technicality thereby eliminating the Rent Free Period and resulting in Bridging, or possibly the Receiver, having to pay \$675,107 in occupation rent for the 12 week period from November 12, 2013 to February 4, 2014. The motions were both returnable on February 7, 2014, four days before the Receiver's planned auction sale.

27. The aforementioned motions were heard by the Honourable Mr. Justice McEwen who rendered a decision in his endorsement dated February 8, 2014 annexed hereto as Appendix G. Ultimately, it was determined that 1) the Ammonia Compressors were owned by Menkes and therefore excluded from the Receiver's auction sale; 2) 852 was not liable for occupation rent as there was a valid agreement in place notwithstanding the technical error in recording the Landlord Agreement; and 3) Mr. Justice McEwen accepted the Receiver's position regarding equitable estoppel

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in that the Receiver had relied on the Rent Free Period in conducting the receivership administration.

Completion of the Maynards Transaction

28. The Maynards Transaction initially provided for a net minimum guarantee ("NMG") from the auction sale of \$1,010,000. Additionally, the Receiver could further benefit from an "up-side" sharing provision if the gross realization from the auction sale exceeded a certain dollar threshold above the NMG.

29. After reviewing Sun Pac's vendor agreements, the Receiver was advised by its counsel that certain private label inventory and packaging, representing a significant dollar value of Sun Pac's inventory, had to be exclusively sold to the respective Sun Pac customers for which such inventory was produced (the "Private Label Inventory"). Given that the Receiver was prevented from selling private label goods to third parties, the Private Label Inventory had to be excluded from the public auction sale.

30. In view of having to exclude the Ammonia Compressors and the Private Label Inventory from the public auction sale, Maynards' NMG was reduced by \$130,000 from \$1,010,000 down to \$880,000 (the "Adjusted NMG"). Maynards nevertheless agreed to liquidate what Sun Pac inventory could be sold by the Receiver on a 15% commission basis.

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31. In accordance with the Approval and Vesting Order the Receiver completed the Maynards Transaction and received the Adjusted NMG the day before the auction sale as set out the in the Liquidation Services Agreement.

32. The Receiver has received Maynards' sale accounting report from the auction sale. Based on the figures reported in Maynards' sale accounting, gross sale proceeds of approximately \$998,695 were generated from the auction sale.

33. Based on the gross recovery from the auction, the Receiver received an additional recovery of approximately \$38,948 above the Adjusted NMG from the auction sale.

Accounts Receivable Collection Efforts

34. The Receiver maintained the Company's blocked accounts with Bank of Montreal so as not to disturb any electronic funds transfer ("EFT's") from the larger retailers paying their respective accounts for pre-receivership sales. After allowing EFT's to post into the blocked accounts for approximately 1 month, the Receiver then contacted the larger retailers and reconciled Sun Pac's accounts.

35. The Receiver also signified the remaining smaller accounts receivable by sending collection letters.

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36. Based on the Receiver's dealings with Sun Pac's customers and the Receiver's collections efforts to date, the Receiver has been able to collect approximately \$273,338 of a total balance of \$361,707 in outstanding accounts receivable.

37. The remaining outstanding accounts receivable balances totaling \$88,369 have been determined to be not collectible for a myriad of reasons mostly relating to overstated balances due to Sun Pac accounting errors, and to a lesser extent, provision for rebates and discounts.

Inventory Realization

38. The book value of the inventory at the date of the receivership was estimated to have a value of \$1,592,000. The inventory consisted of \$524,000 worth of finished goods and a \$1,068,000 of raw materials. The finished goods valued at \$524,000 included \$295,000 worth of private label product. As stated earlier, the contracts under which the private label/branded goods were manufactured would not permit the Receiver from selling those goods to third parties.

39. Loblaws, Walmart and Metro were contacted in an attempt to sell the private labeled goods. Loblaws was concerned about the reputational risk associated with the quality of the goods so they refused to purchase those goods. Metro had switched suppliers and had delisted all of its branded products with Sun Pac due to the latter's inability to fill customer orders given its cash flow constraints prior to the receivership. Consequently, Metro would not purchase any of the private labeled goods from the Receiver.

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40. The raw materials valued at \$1,068,000 included packing materials valued at \$715,000. A significant portion of the packaging on hand was branded and subject to the same sale restrictions as the Private Label Inventory while the remaining packaging was also not saleable.

41. Sales of unrestricted inventory amount to approximately \$75,949.

42. In the end, in excess of \$1.0 million worth of Sun Pac's inventory was not commercially saleable. The majority of the inventory had to be either donated to pre-approved charities or destroyed along with the packaging in compliance with environmental regulations at a significant cost to the Receiver.

Losses For Tax Purposes

43. In reviewing the Company's 2012 tax return, it was determined that there are over \$26 million of losses that could be of interest to potential purchasers.

44. The Receiver initially indicated the availability of the losses to certain purchasers as part of its Sales Process. The Receiver made similar statements in a "teaser" letter to prospective purchasers identified through the Sales Process and to numerous additional parties disclosed to the Receiver by Bridging. Attached as Appendix H, is a copy of the "teaser letter" and a list of the parties that received the "teaser" letter.

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45. The Company's internal financial statements show a further operating loss for the 9 months ended September 30, 2013 of approximately \$4.5 million.

46. The Receiver is advised by Bridging that it has had ongoing discussions with parties interested in entering into a transaction that would allow Sun Pac to receive value for its losses which may require the Receiver in the future to 1) file a Proposal under the *Bankruptcy and Insolvency Act* ("BIA") on behalf of the Company; and 2) file the Company's corporate income tax return for fiscal 2013.

Statutory Government Returns

47. The Receiver may be required to file the Company's outstanding 2013 corporate income tax return and has completed all pre-receivership outstanding HST and T4 returns for 2013.

Choses in Action

48. At the date of the Receivership the Company was involved as a Plaintiff (or Plaintiff by Counterclaim) in ongoing litigation as follows: 1) Sun Pac and Liquibrands against 852 and Bridging as action CV-13-492612 (the "Bridging Action") and; 2) the counterclaim by Sun Pac against John A. Riddell as action CV-12445723 (the "Riddell Counterclaim").

49. The Bridging Action is a claim of Sun Pac and Liquibrands against 852 and Bridging in excess of \$100 million for, *inter alia*, breach of contract for allegedly

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failing to advance the agreed upon "Facility D" loan pursuant to the Forbearance Agreement which allegedly caused irreparable damage to Sun Pac's business and ultimately lead to its demise. A copy of the Bridging Action is included hereto as Appendix I.

50. The initial claim of John A. Riddell against Sun Pac appears to be for breach of a consulting agreement which was a condition, among others, of the closing of the acquisition of the shares of Sun Pac by Liquidbrands.

51. The Riddell Counterclaim is a counterclaim of Sun Pac against the former owner, John A. Riddell, in excess of \$10 million for, *inter alia*, allegedly misappropriating funds, breach of fiduciary duties to Sun Pac and failing to act honestly and in the best interests of Sun Pac by making false representations about Sun Pac's position, history, accounts receivable, inventory, accounts payable, and accrued liabilities, that artificially inflated the value of Sun Pac and its assets, and which had the result of inducing Liquibrands to purchase the shares of Sun Pac at a higher price than it would otherwise pay. A copy of the Riddell Counterclaim is attached hereto as Appendix J.

52. The Receiver neither has the funding nor sufficient knowledge of the history or allegations to pursue either of the litigation claims referenced above.

53. The Receiver has contacted Liquidbrands through its counsel, Wires Jolly LLP, to enquire about Csaba Reider and/or Liquidbrands' interest in purchasing the aforementioned litigation claims. To date, the Receiver has not received a response.

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Landlord Communications

54. During the course of the receivership, representatives of the Receiver were in regular contact with representatives from Menkes. The Receiver together with a representative from Maynards met with Menkes at the Premises to discuss machinery, equipment and "tank-farm" removal procedures following the auction sale and to discuss maintaining the ammonia compressors and freezers.

55. In order to reduce the exorbitant monthly utility costs, the Receiver engaged a licensed refrigerator contractor to shut down the "sub-zero" flash freezer and to raise the temperature in the plant cooler and larger primary freezer. The refrigerator contractor conducted regular inspections of the ammonia compressors and restored the cooler and both freezers to original working condition a few days prior to the Receiver relinquishing vacant possession of the Premises to the Landlord on Saturday, March 15, 2014.

56. The Receiver provided the Landlord with WSIB certificates and evidence of insurance for the rigger engaged by Maynards to remove the machinery, equipment and "tank-farm". Representatives of the Landlord frequented the Premises regularly while the equipment, machinery and "tank-farm" were being dismantled and removed.

57. The Receiver conducted a "walk-through" inspection of the Premises with Menkes on March 12, 2014 (the "Inspection"), three days prior to vacating the premises. The Landlord provided a list of its concerns and alleged deficiencies to the Receiver immediately following the Inspection.

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58. Over the course of the next two days the Receiver again met with representatives from Menkes to address its concerns and to correct certain deficiencies deemed by the Receiver to be its responsibility to correct.

59. The Receiver invited the Landlord to attend at the premises on Saturday, March 15, 2014 to conduct a final inspection before the Receiver relinquished vacant possession of the Premises, however, the Landlord did not attend the requested meeting.

60. On Monday, March 17, 2014 the Receiver couriered a Notice of Vacant Possession effective March 15, 2014 together with the keys to the premises and a cheque for \$135,404.07 for the outstanding rent as set out in the Landlord's invoice covering the period March 1, 2014 to March 15, 2014. Copies of the Notice of Vacant Possession and rent cheque are enclosed hereto as Appendix K.

61. The Landlord has not made the Receiver aware of any significant issues with regard to the Premises since receiving the Notice of Vacant Possession so the Receiver therefore concludes that the Premises was turned over in satisfactory condition.

DEEMED TRUSTS & PRIORITY CLAIMS

62. The Receiver scheduled an audit with Canada Revenue Agency ("CRA") for the Company's payroll account. CRA completed its audit and filed a deemed trust claim of \$31,352.28 for outstanding payroll source deductions. This deemed trust in respect of the employee portion of unremitted payroll source deductions enjoys a super-priority

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over Sun Pac's Property. Attached as Appendix L, is a copy of the deemed trust claim filed by CRA.

63. The Receiver sent notice to former Sun Pac employees advising them of the existence of, and their rights under, the WEPPA. The Receiver also provided the former Sun Pac employees with a Proof of Claim form in order for them to file claims with the Receiver for outstanding wages, expenses, vacation, termination and severance pay. The Receiver determined that up to \$3,102.79 is payable by the Receiver, out of any recovery from the current assets of Sun Pac, in respect of subrogated employee claims under WEPPA that are otherwise payable by the Receiver under Section 81.4 (1) of the BIA in priority to 852. Copies of Service Canada's WEPPA Payment Letters are attached hereto as Appendix M.

64. The Receiver is aware of an additional \$4,192.06 owing in respect of vacation pay that is payable to two former Sun Pac's executives out of the current assets of the Company by virtue of the deemed trust provisions contained in Section 40(1) of the *Employment Standards Act (Ontario)* ("ESA") and the priority afforded to this deemed trust pursuant to Section 30 (7) of the *Personal Property Security Act (Ontario)* ("PPSA").

65. Sun Pac had set up a contributory defined benefit pension plan for its employees registered with the Financial Services Commission of Ontario ("FSCO") as plan registration number 0368381 (the "Pension Plan"). Following the receivership, FSCO appointed Mercer (Canada) Limited ("Mercer") as the Administrator of the Pension Plan.

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66. The Receiver has received a pension claim from Mercer in respect of the Pension Plan totaling \$3,813,966 annexed hereto as Exhibit N. In accordance with section 81.6(1) of the BIA, unremitted employee withholdings in respect of pension contributions including the employer's normal contributions totaling \$55,914 is a secured claim with priority status in a receivership. Accordingly, \$55,914 of the pension claim received from Mercer has priority over the secured claim of 852.

DISTRIBUTIONS

Receipts and Disbursements

67. Attached hereto as Appendix O is the Receiver's Schedule of Receipts and Disbursements ("R&D Statement"). The R&D Statement reports actual receipts over disbursements from November 12, 2013 to April 1, 2014 of approximately \$719,117 before provision for payment of future professional fees, final operating costs and a reserve for contingencies.

68. Recovery from all of the Company's Property is expected to yield a significant shortfall to 852. No other creditor ranking in priority to 852 with respect to the proceeds, is affected by the Receiver's proposed distributions.

69. The Receiver proposes making an interim distribution in the amount of \$477,942 (the "Interim Distribution") as summarized below:

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Receipts over Disbursements (Receiver's R&D Statement)	\$719,117
Professional Fees Outstanding	(175,574)
Reserve for Professional Fees	(30,000)
Reserve for Future Operating Costs	(25,600)
Sub Total	<u>487,942</u>
Less: Holdback re Contingencies	(10,000)
Funds Available for Distribution	<u><u>\$477,942</u></u>

Proposed Distribution to:

Canada Revenue Agency (deemed trust payroll deductions)	(\$31,352)
Vacation Pay (deemed trust per <i>ESA</i>)	(4,192)
WEPPA (pursuant to S. 81.4(1) of <i>BIA</i>)	(3,103)
Mercer re: Pension Claim (pursuant to S. 81.6(1) of <i>BIA</i>)	(55,914)
8527504 Canada Inc.	(383,381)
Total Distribution	<u><u>(\$477,942)</u></u>

70. The Receiver has provided for its estimate of the future professional fees and operating costs that it will likely incur to finalize the administration of the receivership.

71. Following the Interim Distributions and subject to retaining the aforementioned reserves and an additional \$10,000 in the estate bank account as a "holdback" to cover any contingencies (collectively, the "Reserves"), the Receiver proposes to distribute to: i) BDO and LZW monies sufficient to cover the professional fees and disbursements rendered in this matter as set out in the respective fee affidavits appended to this Second Report as Appendix P and Appendix Q; and (ii) to 852, the balance of the Reserves, if any, together with any monies remaining in the Sun Pac estate, up to a maximum amount of the Company's indebtedness of approximately \$3.1 million (the "Secondary Distributions") without further order of the Court.

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FEES AND DISBURSEMENTS

72. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements which are more particularly described in the affidavit and detailed invoices attached hereto as Appendix P.

73. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

74. Additionally, the Receiver has incurred legal fees of its counsel, LZW, in respect of these proceedings, including the 852 security review, as per the fee affidavit and exhibits attached hereto as Appendix Q.

75. The Receiver has reviewed LZW's fee affidavit and believes same to be fair and reasonable in the circumstances.

76. The Receiver requests that the Court approve its interim accounts from November 12, 2013 to March 31, 2014 in the amount of \$296,420.02 inclusive of HST of \$34,101.42.

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77. The Receiver also requests that the Court approve the accounts of its legal counsel for the period November 12, 2013 to March 27, 2014 in the amount of \$83,355.86 inclusive of HST of \$9,575.00

78. Additional time will be required to complete the Receiver's mandate. To complete the receivership proceedings the Receiver estimates its future professional fees and that of its counsel, provided no unforeseen issues arise, will be no greater than \$20,000 and \$10,000 respectively (together the "Fee Reserves" which form part of the Reserves). Accordingly, the Receiver requests the Court approve the Fee Reserves.

SUMMARY AND RECOMMENDATIONS

79. Based on the foregoing, the Receiver recommends that the Court:

- a) approve this Second Report of the Receiver, and the activities and conduct of the Receiver set out herein;
- b) approve the Receiver's R&D Statement;
- c) authorize and direct the Receiver to make the Interim Distributions and the Secondary Distributions as recommended herein; and
- d) approve the professional fees and disbursements of the Receiver and its counsel, LZW, and the Fee Reserves as set out herein.

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All of which is respectfully submitted this 10th day of April, 2014.

**BDO CANADA LIMITED Court Appointed Receiver of
Sun Pac Foods Limited
Per:**



Blair Davidson, CPA, CA, CIRP, CBV, CMC
President

APPENDIX "D"

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF *THE COURTS OF JUSTICE ACT*, R.S.O 1990, c. C. 43, AS AMENDED

**THIRD SUPPLEMENT TO THE FIRST REPORT OF BDO CANADA LIMITED, IN ITS
CAPACITY
AS COURT APPOINTED RECEIVER**

August 28, 2014

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- B Endorsement of Justice Brown dated January 9, 2014**
- C Order of Justice Brown dated July 18, 2014**
- D Receivership Order**
- E Email of Kevin Reider dated October 9, 2013**
- F Email Exchanges Between Lipman Zener & Waxman LLP and Wires Jolly LLP from June 10 to June 17, 2014**
- G Receiver's Call Log and Conference Call Notes**

Third Supplement to the First Report of the Receiver

1. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Receiver's First Report dated January 3, 2014 (the "First Report") and the Notice of Motion herein.

Purpose of the Report

2. The Receiver is filing this Third Supplement to the First Report dated August 28, 2014 (the "Third Supplemental Report") given that the Receiver has been asked by both Liquibrands and 852 to further elaborate on the circumstances surrounding certain Brazilian orange juice as discussed in Paragraph 34 of the First Report. A copy of the First Report is included hereto as Appendix A.

3. 852 objected to how the Receiver described the circumstances surrounding the Brazilian orange juice in the First Report. Liquibrands' objection was noted in the endorsement of the Honourable Justice Brown dated January 9, 2014 attached hereto as Appendix B.

4. Paragraph 34 of the First Report states "...The raw materials of approximately \$352,000 included "tainted" or "stale dated" juice concentrate of approximately \$100,000. The Debtor planned to convert this product by combining it with new raw materials. The Receiver contacted the Canadian Food and Inspection Agency and was advised this tainted or stale dated product could not be combined with new raw materials and should be destroyed...".

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5. To the Receiver's knowledge, neither Liquibrands nor 852 question the Receiver's decision to dispose of the Brazilian orange juice, however, it appears that certain facts surrounding the subject orange juice are of importance in ongoing litigation between Liquibrands and 852.

6. By Order of the Honourable Justice Brown dated July 18, 2014, the Court granted Liquibrands leave to deliver and file the affidavit of Michael Petric sworn June 23, 2014 (the "Petric Affidavit") with respect to the motion of Liquibrands and application of 852 returnable November 28, 2014. 852 is entitled to respond to the Petric Affidavit by examining witnesses pursuant to Rule 39.03 of the *Rules of Civil Procedure*, by cross-examining Michael Petric ("Petric") on the Petric Affidavit and Liquibrands is entitled to cross-examine on any additional affidavit evidenced served by 852 in response to the Petric Affidavit. The July 18, 2014 Order of Justice Brown is included hereto as Appendix C.

Disclaimer

7. This Third Supplemental Report dated August 28, 2014 is prepared solely for the use of the Court for the purpose of providing additional information in relation to certain Brazilian orange juice that appears to be of importance in ongoing litigation between Liquibrands and 852. The Receiver does not claim to be a specialist in the manufacture, distribution or sale of juice products so the information provided in this Third Supplemental Report is based on information and advice provided to the Receiver by Sun Pac's Senior Executives (defined later), certain Sun Pac employees

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and the Canadian Food and Inspection Agency ("CFIA"). The Receiver has relied upon discussions with Sun Pac's Senior Executives, certain Sun Pac employees and the CFIA in reaching any conclusions set out in this Third Supplemental Report.

8. Unless otherwise stated, all monetary amounts contained in this Third Supplemental Report are expressed in Canadian dollars.

Background

9. Sun Pac was a Canadian manufacturer of private label and branded beverage products, including juices, natural teas, sport drinks, juice concentrates, frozen juices and other beverage products. Sun Pac also manufactured croutons and bread crumbs under the McDowell Ovens' banner.

10. On application by 852, Sun Pac's senior secured lender, BDO Canada Limited was appointed as the Receiver (the "Receiver") without security, of all of the assets, undertakings and properties of the Debtor, pursuant to the order of the Honourable Madam Justice Mesbur made November 12, 2013 (the "Receivership Order"), a copy of which is annexed as Exhibit D.

11. Upon its appointment, the Receiver attended at the Sun Pac Premises to take possession and control of Sun Pac's property and assets. Csaba Reider, the former President and CEO, was the only representative from Sun Pac onsite at the date of the receivership. Csaba Reider advised the Receiver that all of the Sun Pac employees were laid off prior to the receivership as the company did not have sufficient cash flow to fund its payroll obligations.

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12. The Receiver discussed with Csaba Reider its intention to determine the cash requirements to resume operations in the short-term to potentially preserve goodwill while commencing a sale process for the business, assets and property of Sun Pac to maximize recoveries for all stakeholders.

13. Over the next few days, the Receiver engaged Garth Rombough, former Vice President of Finance, Kevin Reider, former Director of Sales and Marketing, Nelson Le Drew, former National Sales Manager, and Angela Pappano, former Payroll and A/P Coordinator, to assist the Receiver with:

- a) preparing a cash flow forecast;
- b) obtaining information with respect to outstanding accounts receivable;
- c) strategizing on maximizing recoveries from the existing inventory;
- d) assembling information required to prepare a Confidential Information Memorandum for circulation in the Receiver's planned sale process; and
- e) assembling a creditor's list and attending to other receivership administrative tasks such as dealing with Sun Pac's pension plan and complying with the *Wage Earner Protection Program Act*.

14. Although not directly engaged by the Receiver, Csaba Reider attended at the Sun Pac Premises on a regular basis; he offered advice and opinions to the Receiver for a number of weeks.

15. Based on recommendation from Kevin Reider, Nelson Le Drew was engaged by the Receiver specifically to sell Sun Pac's branded juice products through the

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company's regular distributor contacts to maximize recovery from the branded inventory.

16. Petric, the former Quality Control Manager, was engaged by the Receiver to assist, on an intermittent basis, with providing advice on the quality, quantity and saleability of the juice concentrates and raw materials located in Sun Pac's coolers and freezers. Petric also assisted the Receiver to locate certificates of analysis, where available, and product formulas that were ultimately sold during the sale process.

17. The Receiver also engaged other former Sun Pac plant employees on an intermittent basis to assist the Receiver with carrying out its mandate.

18. During an initial tour of the manufacturing plant with Garth Rombough, Csaba and Kevin Reider ("Sun Pac's Senior Executives"), a senior representative of the Receiver, Gary Cerrato ("Cerrato"), was made aware of a number of skids of Brazilian orange juice packaged in 1.36 litre plastic containers stored in Sun Pac's freezer (the "Brazilian OJ").

19. During the aforementioned initial tour, Cerrato was advised by Sun Pac's Senior Executives that the Brazilian OJ could not be sold in the United States ("U.S.") as it had been banned by the U.S. Food and Drug Administration ("FDA") due to it having high levels of carbendazim. Cerrato was also advised by the Senior Executives that the Brazilian OJ had been frozen before the "best before" dates marked on the plastic containers to suspend deterioration of the product. At the receivership date, the "best before" dates marked on the plastic containers were out of date and the

-8-

Brazilian OJ appeared to the Receiver to be stale dated and not suitable for consumption. Cerrato was advised by the Senior Executives that Sun Pac had intended on re-working and blending the Brazilian OJ with 70% fresh juice concentrate (30% old Brazilian OJ) and repackaging the new blended juice in small cans to sell to international cruise line customers. Attached as Appendix E, is an internal email sent by Kevin Reider prior to the receivership to Csaba Reider and Garth Rombough concerning Sun Pac's intention to blend and repackage the Brazilian OJ dated October 9, 2013 (the "Kevin Reider Email") which is consistent with information relayed to the Receiver by the Senior Executives at the onset of the receivership proceedings.

20. At no time during the course of the receivership administration did Sun Pac's Senior Executives ever advise the Receiver that the subject Brazilian OJ could be sold in its (then) current state.

21. Cathal O'Looney ("O'Looney") from the Receiver's office was responsible for overseeing the daily onsite administration duties during the receivership proceedings. Sun Pac's former employees, Nick Dilorio and Shammie Siberan informed O'Looney that the Brazilian OJ was set aside in the freezer as it was not saleable given its "dark" colouring and past due dating.

22. Ultimately, the expected cash requirements to bolster working capital and to fund the operating losses were too large to merit the re-start of business operations. As a result, the Receiver had no funding to resume manufacturing to even consider blending and repackaging the Brazilian OJ to sell to cruise line customers. Moreover, Csaba Reider advised Cerrato that the time period to secure juice orders from international cruise line customers had likely run out as they typically placed orders in early Fall for the upcoming season.

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23. On Wednesday, December 4, 2013 the Receiver was contacted by Raj Ramphal, a representative of the CFIA, to schedule inventory quality testing at the Sun Pac Premises.

24. Raj Ramphal ("Ramphal") and other representatives from CFIA arrived at the Sun Pac Premises to conduct random inventory quality testing on Friday, December 6, 2013. During the meeting, Cerrato advised Ramphal that there was orange juice stored in Sun Pac's freezer that had been frozen to suspend the aging process and that the "best before" dates printed on the containers was out of date. Cerrato asked if it was permissible for the Receiver to blend the aged and possibly expired Brazilian OJ with fresh concentrate to sell in Canada. Ramphal advised that such a practice would be considered "fraud" and was not permitted by the CFIA.

25. Given the circumstances surrounding the Brazilian OJ and the decision to not re-start operations due to the costs and forecasted losses, the Receiver concluded that the Brazilian OJ was not saleable in its (then) present state and had to be destroyed.

26. The Receiver does not know what Sun Pac food products were randomly tested by CFIA. Furthermore, the Receiver has never been advised of the results of the random testing of Sun Pac's products completed by CFIA.

27. The Receiver did not dispose of the Brazilian OJ until after the auction of the Sun Pac assets and just prior to the Receiver relinquishing possession of the leased Premises to the landlord on March 15, 2014. Again, at no time did representatives of Liquibrands or the Senior Executives ever advise the Receiver that the Brazilian OJ

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could be sold in its (then) present state other than to object to the characterization of the subject Brazilian OJ contained in the Receiver's First Report.

28. Between June 10, 2014 and June 17, 2014 the Receiver's counsel, Jason Spetter from Lipman, Zener & Waxman LLP ("LZW"), exchanged emails with Krista Bulmer from Wires Jolly LLP ("Wires"), counsel for Liquibrands, concerning the Brazilian OJ. Ms. Bulmer questioned how the Receiver came to the "erroneous conclusion" that the Brazilian OJ needed to be blended with new raw materials before it could be sold. The Receiver provided Ms. Bulmer with the Kevin Reider Email and advised that it was consistent with information provided to the Receiver by Sun Pac's Senior Executives. Ms. Bulmer further claimed that the date coding of the product was only for internal purposes and irrelevant once the product was frozen; however, the date coding or "best before" dates on the Brazilian OJ plastic containers was the only measure of quality and freshness the Receiver could reasonably rely upon in the circumstances. The Receiver had no way to confirm precisely when or at what stage in its "shelf life" the Brazilian OJ was frozen. Copies of the email exchanges between LZW and Wires are included hereto as Appendix F.

29. On June 16, 2014, six days prior to Petric swearing the Petric Affidavit, the Receiver contacted Petric by telephone to reconfirm the Receiver's understanding with regard to the Brazilian OJ. During a conference call between Petric, O'Looney and Cerrato, Petric reconfirmed that the Brazilian OJ could not be sold in its (then) present state by the Receiver without blending the Brazilian OJ with approximately 70% fresh concentrate since the Brazilian OJ had discoloured as a result of sitting too long in the Sun Pac plant before it was placed in the freezer and frozen to suspend the aging process. Attached as Appendix G, is the Receiver's call log evidencing the call

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to Petric by the Receiver on June 16, 2014 together with the Receiver's attendees' file notes documenting the call.

All of which is respectfully submitted this 28th day of August, 2014.

**BDO CANADA LIMITED Court Appointed Receiver of
Sun Pac Food Limited**

Per: 

Name: Gary Cerrato, CIRP

Title: Vice-President

APPENDIX "A"

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O 1990, c. C. 43, AS AMENDED

**FIRST REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

January 3, 2014

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INITIAL RECEIVERSHIP ACTIVITIES	7
SALES AND MARKETING EFFORTS	9
LEASED ASSETS AND INVENTORY	13
POTENTIAL PRIORITY CLAIMS	14
SUMMARY OF RECEIPTS AND DISBURSEMENTS	15
SUMMARY AND RECOMMENDATIONS	15

EXHIBITS

- A Receivership Order
- B Confidential Information Memorandum
- C Summary of Receipts and Disbursements

INTRODUCTION AND PURPOSE OF THIS REPORT

1. Sun Pac Foods Limited ("Sun Pac" or the "Debtor") is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario). Sun Pac is a privately owned corporation which manufactured juices and sport drinks under the Sun Pac brand and for private label customers. Sun Pac also manufactured croutons and breadcrumbs under the "McDowell Ovens" banner.
2. In November 2011, Sun Pac was acquired by Liquibrands Inc. ("Liquibrands"), a private investment firm owned by Csaba Reider, at which time Csaba Reider became President and Chief Executive Officer of Sun Pac.
3. The Debtor's head office and manufacturing facility is located at a leased facility which is municipally known as 10 Sun Pac Boulevard, Brampton, Ontario (the "Premises").
4. Pursuant to an Amended and Restated Letter Agreement accepted by Sun Pac and Liquibrands on January 18, 2013, (as amended, the "Credit Agreement") Bridging Capital Inc. ("Bridging") provided credit facilities to Sun Pac which were payable on demand and secured, by among other things, a General Security Agreement dated October 1, 2012. Liquibrands agreed to be jointly and severally liable for repayment of the loans.
5. The Credit Agreement was assigned by Bridging to 8527504 Canada Inc. ("852") in May 2013.

6. On September 5, 2013, 852 made written demand on the Debtor for payment of the indebtedness (the "Debtor Demand Letter"). The Debtor Demand Letter was accompanied by a Notice of Intention to Enforce Security addressed to the Debtor and prepared pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended from time to time ("BIA"). At the time of the demand, the Debtor was indebted to 852 in the amount of approximately \$3.95 million.

7. Sun Pac and 852 entered into a Forbearance Agreement dated September 11, 2013 (the "Forbearance Agreement") pursuant to which, among other things, 852 agreed not to take any further enforcement steps until the earlier of December 9, 2013 or the occurrence of an event of default under the Forbearance Agreement.

8. Sun Pac defaulted on its obligations under the Forbearance Agreement, ceased operations on November 7, 2013 and had previously consented to the appointment of a receiver in the event of a default.

9. On application by 852, the Debtor's senior secured lender, BDO Canada Limited was appointed as the Receiver (the "Receiver") without security, of all of the assets, undertakings and properties of the Debtor, pursuant to the order of the Honourable Madam Justice Mesbur made November 12, 2013 (the "Receivership Order"), a copy of which is annexed as Exhibit "A".

10. The Receiver has retained Lipman Waxman LLP as its legal counsel.

11. The purposes of this Report are to:

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- (a) inform this Honourable Court of the activities of the Receiver taken to date, in particular with respect to the marketing and sale process conducted and to request the Court's approval of the actions of the Receiver taken to date;
- (b) advise of the proposed liquidation of the inventory and equipment (the "Assets") via auction using the liquidator recommended in the Confidential Supplemental report (the "Liquidator") which is subject to this Honourable Court's approval (the "Sale");
- (c) to request approval and direction to complete the Sale of the Assets via auction with the Liquidator; and
- (d) to request a sealing order sealing the Confidential Exhibits to this First report, in order to preserve the integrity of the sales and marketing process, until the acceptance of the liquidation agreement, or until further Order of this Honourable Court.

BACKGROUND

12. The Debtor is a privately-owned corporation which manufactures juice and sport drink products. Customers include major grocery chains such as Loblaws, Metro and Walmart. In addition, the Debtor has a bread crumb and crouton manufacturing business which operated under the "McDowell Ovens" banner.

13. 852 is the Debtor's senior secured lender and is owed approximately \$3.1 million as at the receivership date.

14. The Debtor's head office is located at a leased facility located in Brampton, Ontario. Menkes GTA Holdings Inc. ("Menkes") is the landlord and also, pursuant to various lease amendments and arrangements, is a subordinate ranking secured creditor in the amount of approximately \$447,491.

15. Liquibrands also appears to be a subordinate ranking secured creditor that is owed approximately \$2.7 million.

16. Over the past two years the Debtor began incurring significant losses due to the inability to generate sufficient revenue and margins to cover the fixed operating costs associated with the large manufacturing facility.

17. In or around September 2013, Sun Pac entered into a significant contract to supply Loblaws with private label soft drinks. To fulfill this long term contract, substantial capital expenditures would be required. Unfortunately, the Debtor was unable to raise the necessary financing to fund operating losses and the expansion.

18. The Debtor ceased operations on or about November 7, 2013 when it was unable to fund the payroll.

19. As a result of the liquidity issues the Debtor was forced to cut back manufacturing and shipping, deplete its accounts receivable and inventory and stretch payments to its suppliers. This resulted in the erosion of the customer base since Sun Pac was unable to fill customer orders. The liquidity issues also caused problems with

suppliers who placed the Debtor on "C.O.D." terms. Certain suppliers initiated legal proceedings to recover amounts overdue.

20. The Receiver, with the assistance of former management personnel, prepared a financial forecast for the re-start of both the juice and bread crumb businesses. Unfortunately the expected cash requirements to bolster working capital and to fund the operating losses were too large to merit the operation of the businesses.

21. Prior to the date of Receivership the Debtor had laid off its employees. The Debtor advised that as a result of the layoff, the employees did not report to work on the date of Receivership.

22. In reviewing the Debtor's 2012 tax return, it was determined that there are over \$26 million of tax losses which may be of interest to a potential purchaser of the business.

INITIAL RECEIVERSHIP ACTIVITIES

23. Following the granting of the Receivership Order on November 12, 2013 the Receiver attended at the Premises, to take possession and secure the Debtor's property. The initial activities of the Receiver included:

- (a) changing the locks;
- (b) contacting the utilities, alarm and insurance providers to give notice of the receivership and arrange for continued services;
- (c) meeting with Sun Pac's management to discuss the plans for the receivership administration including determining which of Sun Pac's

employees could assist the Receiver with selling inventory in the ordinary course, assembling information to comply with the *Wage Earners Protection Program Act* ("WEPPA") updating accounting records, preparation of T-4's and records of employment as well as other administrative duties;

- (d) taking an inventory of the owned and leased equipment;
- (e) assessing the requirement to maintain the freezers which housed certain finished product and raw material inventory;
- (f) reviewing the Debtor's books and records to identify priority claims;
- (g) identifying third party owned goods and releasing such goods to third parties once proof of ownership was ascertained;
- (h) responding to creditor and employee inquiries;
- (i) preparing and issuing the prescribed notices and statements of the Receiver pursuant to sections 245 (1) and 246 (1) of the BIA, which were sent to creditors;
- (j) contacting lessors, requesting that they provide proof of their security, and, where the security was valid and there was no equity in the leased equipment, releasing such to the lessors;
- (k) sending notices, instructions and proofs of claim to the former employees of the Debtor pursuant to the prescribed requirements of the WEPPA;
- (l) identifying finished good branded inventory which could be sold to existing customers in the ordinary course;
- (m) contacting private label customers to determine if they would agree to accept their finished product; and

- (n) contacting Financial Services Commission of Ontario to request them to appoint an Administrator to wind down/terminate Sun Pac's pension plan.

SALES AND MARKETING EFFORTS

24. Pursuant to its powers contained in the Receivership Order, the Receiver initiated a sales and marketing process (the "Sales Process") to invite offers to purchase the assets and tax losses of Sun Pac (the "Assets") on an en bloc or on a specific asset parcel basis. The Sales Process, consisted of the following steps:

- i. Preparing a list of over 130 parties to contact by telephone and email with a "teaser letter" including potential strategic buyers and liquidators.
- ii. Preparing a form of confidentiality agreement and a confidential information memorandum (the "CIM") to invite offers to purchase the Assets, which included the terms and conditions of sales (the "Terms and Conditions of Sale") and an offer form (the "Offer Form"). A copy of the CIM is attached hereto as Exhibit "B". A total of 57 prospective purchasers signed a Non Disclosure Agreement to gain access to an electronic data room which included the CIM and other financial information. The Terms and Conditions included in the CIM requested that offers be submitted no later than 5 pm on December 19, 2013 (the "Offer Deadline") and that the following be provided with the Offer Form:

- Identity of the purchaser

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- Indication of the parcel of assets to be purchased and the dollar value of the offer by asset;
 - Whether the offer was to be considered an en bloc offer;
 - The total dollar value of the offer submitted; and
 - A deposit equal to 10% of the offer price.
- iii. Advertising the opportunity in the national edition of the Globe & Mail on November 29, 2013.
- iv. Creating a website promoting the opportunity to acquire Sun Pac which also provides access to all public Court documents. The website domain address is www.bdo.ca/sunpac.
- v. An internal email was sent to all partners of BDO informing them of the acquisition opportunity, and making it available to BDO clients.
- vi. The "teaser letter" was posted on the Axial website thereby promoting the acquisition opportunity to private market professionals.
- vii. Providing access to prospective purchasers to the Premises to view the assets (a total of 13 parties attended the Premises to view the assets).
- viii. Granting access to the Debtor's management and providing site visits.
- ix. Notifying prospective purchasers of the opportunity to obtain the tax losses by sending a specific teaser to additional potential candidates and providing copies of the tax returns in the electronic data (notifying all parties that had signed an NDA).
- x. Responding to additional information requests and questions.
- xi. Receiving and refining the proposals; and

- xii. Selecting a winning bidder, executing a liquidation service agreement and preparing to seek Court approval to close the transaction.

25. The Debtor's machinery and equipment consists of juice processing and bottling line equipment, a group or farm of large holding tanks, freezers and bread crumb and crouton manufacturing equipment.

26. Prior to the date of Receivership the Debtor had engaged Sabito Machinery to appraise the machinery and equipment on a forced liquidation basis (the "Sabito Appraisal"). The Debtor also commissioned an independent appraisal on an orderly liquidation basis which was completed by Century Services Inc. (the "Century Appraisal"). An orderly liquidation appraisal of the inventory was prepared by Danbury Sales Limited ("Danbury") also at the request of the Debtor. The appraisals are annexed as Confidential Exhibits "A", "B" and "C", respectively, to the Confidential Supplement of this First Report and are to be the subject of a sealing order requested herein.

27. By the Offer Deadline seven liquidation proposals were received. No en bloc going concern offers were received. Two offers were received for the bread crumb manufacturing equipment.

28. The Receiver reviewed and assessed the seven liquidation proposals. A comparison of the proposals including the key terms is set out in a summary annexed as Confidential Exhibit "D", to the Sealed Portion of this First Report and subject to the sealing order requested herein. Copies of the proposals are annexed as

Confidential Exhibits "E" to "L", to the Confidential Supplement of this First Report and are subject to the sealing order requested herein.

29. The Receiver considered the net minimum guarantee offer ("NMG") submitted by the Maynards Industries Inc ("Maynards") as the best offer as the Liquidator's proposal provides for: (i) a significant deposit (10% of the NMG) at the time of signing the liquidation agreement (the "Liquidation Agreement"); (ii) the NMG and date of agreed departure from the Premises generated the highest net realization from the assets. Accordingly, the Receiver, with the agreement of 852, accepted the Liquidator's proposal subject to Court approval.

30. The Liquidator required the Receiver to obtain an order from this Honourable Court that, among other things, (i) approves the Liquidation Agreement and the transactions contemplated herein; (ii) authorizes the Receiver to enter into the Liquidation Agreement, (iii) authorizes the Liquidator to act as the agent for the Receiver in selling the assets and (iv) provides that upon execution of an instrument of transfer, substantially in the form attached hereto as Confidential Exhibit "N", title to the Assets will vest in the ultimate purchasers thereof from the Liquidator free and clear of all liens and encumbrances (the "Sale Order"). The proposed Liquidation Agreement is annexed hereto as Confidential Exhibit "M".

31. Just prior to the receivership on November 12, 2013 Sun Pac and Liquibrands issued a Statement of Claim against 852 and Bridging for breach of contract relating to their dealings as operating lender. This cause of action was not offered as part of the Receiver's sales process. The Receiver has not yet made a determination as to the

potential value of this contingent asset. Further, the principal of the Debtor, Mr. Reider, is the party most likely to be interested in and able to pursue this litigation.

LEASED ASSETS AND INVENTORY

32. The Receiver is only aware of certain leased tanks and vending machines at the time of preparing this Report. The Receiver is currently reviewing the leases to determine ownership interest in these assets.

33. The book value of the inventory at the date of the receivership is estimated to be \$1,592,000. There were approximately \$524,000 worth of finished goods which included \$295,000 of private label product. The receiver contacted Loblaws to attempt to sell the "President's Choice" labeled goods however, Loblaws were concerned about the reputational risk associated with the quality of the goods so they refused to purchase those goods. In addition, the contract under which the goods were manufactured would not permit the Receiver from selling those goods to third parties.

34. The inventory also consisted of raw materials of approximately \$1,066,000 which included packing materials of \$715,000. The raw materials of approximately \$352,000 included "tainted" or "stale dated" juice concentrate of approximately \$100,000. The Debtor planned to convert this product by combining it with new raw materials. The Receiver contacted the Canadian Food and Inspection Agency and was advised this tainted or stale dated product could not be combined with new raw materials and should be destroyed. Without converting raw material and packaging into finished product, the recoveries from inventory were expected to be quite low.

POTENTIAL PRIORITY CLAIMS

35. A few minor property claims have been received since the Receivership date. The Receiver reviewed the claims along with supporting documentation and released the assets to their owners as appropriate. The Receiver received and reviewed a 30 day goods claim from Solocup in the amount of \$74,731.67, however, only \$15,478.74 of the goods claimed for repossession qualified within the appropriate time frame and were repossessed by the supplier.

36. The Receiver reviewed the books and records of the Debtor and identified potential priority/secured claims totaling approximately \$96,000, which consist of the following:

- (i) Source Deductions - Canada Revenue Agency ("CRA") has been contacted to conduct a source deductions audit. Based upon Sun Pac's books and records, preliminary estimates of the source deduction arrears amount to \$40,000.
- (ii) HST - CRA has been contacted to conduct an HST audit. The Debtor's books and records indicate that HST is consistently in a refund position.
- (iii) Unremitted pension contributions which would be a secured claim estimated at \$56,000. The Receiver is not aware at this time of any other amounts under the pension plan that would be considered a secured or trust claim.
- (iv) The Receiver is not aware of any amounts that would be secured under S. 81.4(1) of the BIA in respect of employee claims for outstanding wages and vacation pay as all such amounts were reportedly paid in full

to the former employees by Sun Pac prior to it ceasing operations on November 7, 2013.

SUMMARY OF RECEIPTS AND DISBURSEMENTS

37. The Receiver currently holds approximately \$413,486 in its trust account. The majority of the receipts relate to the collection of receivables, HST refunds received and the cash in the Debtor's bank accounts seized by the Receiver on the receivership date. A summary of the Receipts and Disbursements is appended hereto as Exhibit C.

SUMMARY AND RECOMMENDATIONS

38. The Receiver is satisfied that the sale and marketing process sufficiently exposed for sale the business and assets of the Debtor to the marketplace. Furthermore, the Receiver is of the view that the Liquidator's offer constitutes the best offer for the sale of the Debtor's assets. The Receiver's recommendation is supported by the senior secured lender, 852.

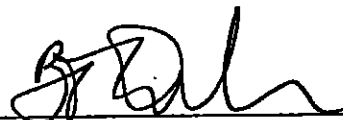
39. Accordingly, the Receiver respectfully requests an order:

- (i) Approving the Receiver's activities as set out herein;
- (ii) Approving the sale the Debtor's Assets pursuant to the terms of the Liquidation Agreement;
- (iii) Authorizing and directing the Receiver to take such steps as necessary to carry out the terms of the Liquidation Agreement; and
- (iv) Sealing the Sealed Portion of the First Report.

All of which is respectfully submitted this 3rd day of January, 2014.

**BDO CANADA LIMITED Court Appointed Receiver of
Sun Pac Food Limited**

Per: _____



Name: Blair Davidson, CPA, CA, CBV, CIRP

Title: President

APPENDIX "B"

JANUARY 9, 2014

SUN PAC FOODS LIMITED
Respondent

-and-

8527504 CANADA INC.
Applicant

Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
TORONTO

MOTION RECORD
(Sale and Vesting Order, returnable
Thursday January 9, 2014)

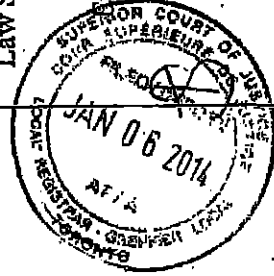
LIPMAN, ZENER & WAXMAN LLP
Barristers and Solicitors
1220 Eglinton Avenue West
Toronto, Ontario
M6C 2E3

JASON D. SPETTER
Law Society Registration No. 46105S

ANTHONY J. O'BRIEN
Law Society Registration No. 27440E
Tel: (416) 789-0652
Fax: (416) 789-9015

emails: jspetter@lzwlaw.com;
tobrien@lzwlaw.com

Lawyers for the Receiver



Jan 9/14
~~Spetters wants to talk with Receiver about whether
certain equipment should be included in the vesting order.
On consent, offer to pay 1 hour, and 1 day.~~
[Signature]
D. BROWN T.

Jan 9/14
Soundair has been met. The landlord disputes that the
assets identified in Sch A have to be included in
the vesting order. The parties have agreed that for purposes
of the order presented today, the Sch A Assets shall not be
included and the parties shall return before the court on
Jan 21/14 to argue the issue, if they have not reached a
settlement. As to para 2 of the proposed order, liquidated
has made the submissions forwarded at Sch B to my
order and I attach them submissions so that
liquidated's position is clear. Order to go in accordance
with draft filed which I have signed *[Signature]*

Sol A Kay
Jan 9/14 addendum *DK*
D.M. Brown

Freezers, Vilter ammonia compressors
and related ancillary freezer components
shall be excepted from sale until an
agreement is reached between the parties
with respect Hereto or until further order
of this Honorable Court.

Schedule B to an endorsement of Jan 9/14 by ^{D.H. DROWNY} 7
 LIQUIBRANDS DOES NOT OBJECT TO 9. 2014.
 THE SALE ORDER.

LIQUIBRANDS HAS AN OUTSTANDING
 ACTION AGAINST 852 + BRIDGING.
 AS DOES SUN PAC. THE RECEIVER HAS
 NOT ASSESSED THE SUN PAC CLAIM.

LIQUIBRANDS, SERVED WITH THE MOTION
 APPEARS TO VOICE DISAGREEMENT
 WITH ASSERTIONS IN PARAS. 8, 17 + 34
 OF THE RECEIVER'S REPORT + TO ENSURE
 THEY ARE NOT SEEN TO ACQUIESCE TO THE
 ASSERTIONS OR BE ESTOPPED IN COLLATERAL
 PROCEEDINGS.

LIQUIBRANDS AND OBJECTORS
~~THEIR~~ POSITION IS SO NOTED

AND THE SALE ORDER DOES NOT ESTOP.

~~ASSUMES THAT~~ LIQUIBRANDS IS BOUND FROM ~~SCHEDULE~~
~~BY OR AGREEES~~ ~~W/~~ ~~THE~~ ~~ASSERTIONS~~

IN PARAS. 8, 17 + 34 OF THE RECEIVER'S
 REPORT IN THE LITIGATION.

APPENDIX "C"

Court File No. CV-14-10543-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

FRIDAY, THE 18th

MR. JUSTICE D. BROWN

DAY OF JULY, 2014

BETWEEN:

8527504 CANADA INC.

Applicant

and

LIQUIBRANDS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 c. C. 43, AS AMENDED

Court File No. CV-13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 CANADA INC.

Applicant

and

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O. 1990 c. C. 43, AS AMENDED

ORDER

-2-

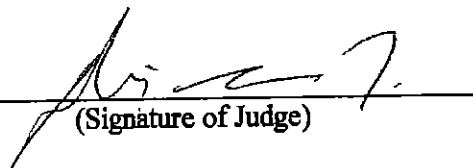
THIS MOTION, made by Liquibrands Inc. ("Liquibrands"), for leave to file affidavit evidence under Rule 39.02 (2) of the *Rules of Civil Procedure*, was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

ON READING the motion record, factum and brief of authorities of Liquibrands and on reading the responding motion record of 8527504 Canada Inc. ("852"), and on being advised by counsel to 852 that 852 no longer opposes the relief being sought in the motion apart from the issue of the costs of the motion, and upon hearing the submissions of the lawyers for the parties on the costs of the motion,

1. THIS COURT ORDERS that Liquibrands is hereby granted leave to deliver and file the affidavit of Michael Petric sworn June 23, 2014 (the "Petric Affidavit") and that the prior service and filing of the Petric Affidavit is hereby validated.
2. THIS COURT ORDERS that 852 will be entitled to respond to the Petric Affidavit by examining witnesses pursuant to Rule 39.03 of the *Rules of Civil Procedure*, by cross-examining Mr. Petric on the Petric Affidavit, and/or relying on such affidavit or other evidence served after the date hereof and to be filed with respect to the motion of Liquibrands and application of 852 currently returnable August 21, 2014.
3. THIS COURT ORDERS that Liquibrands will be entitled to cross-examine on any additional affidavit evidence served by 852 in response to the Petric Affidavit.
4. THIS COURT ORDERS that any further examinations or cross-examinations are to be conducted on dates to be agreed upon by the parties and subject to the availability of the witnesses.

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5. THIS COURT ORDERS that the costs of the motion for leave to file the Petric Affidavit are reserved to the judge hearing the main motion on August 21, 2014.


(Signature of Judge)

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO..

JUL 22 2014

MB

8527504 CANADA INC.
Applicant
8527504 CANADA INC.
Applicant

-and- LIQUIBRANDS INC.
Respondent
-and- SUN PAC FOODS LIMITED
Respondent

Court File No. CV-14-10543-00CL/CV-13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

WIRES JOLLEY LLP
Barristers and Solicitors
90 Adelaide Street West
Suite 200
Toronto, Ontario
M5H 3V9

David E. Wires (LSUC# 18017P)
Email: dewires@wiresjolleylp.com
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)
Email: kbulmer@wiresjolleylp.com
Tel: (416) 366-6516

Tel: (416) 366-0000
Fax: (416) 366-0002

Lawyers for the respondent and creditor, Liquibrands Inc.

APPENDIX "D"

Court File No. CV13-10331-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAN)
JUSTICE MESBUR.)

TUESDAY, THE 12TH DAY
OF NOVEMBER, 2013

BETWEEN:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

ORDER

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Sun Pac Foods Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Len Kofman sworn November 12, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Respondent, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- 3 -

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- 4 -

- i. without the approval of this Court in respect of any transaction not exceeding \$ _____, provided that the aggregate consideration for all such transactions does not exceed \$ _____; and
- ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

- 6 -

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment,

(iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for

herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

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23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

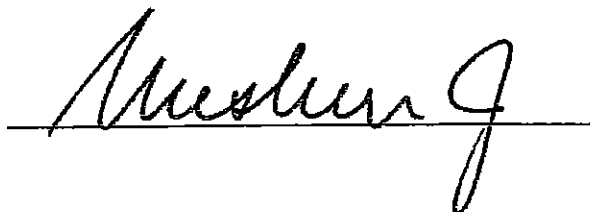
25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



TO: COURT OF CHANCERY TORONTO
CASE NO. 13
LE / DATE LE - AS SITE NO.

NOV 12 2013

MB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Sun Pac Foods Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

BDO CANADA LIMITED, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

8527504 CANADA INC.

Applicant

and

SUN PAC FOODS LIMITED

Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at TORONTO

ORDER

CHATONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
M2N 7E9

George Benchetrit (LSUC #34163H)
Tel: 416-218-1141
Fax: 416-218-1841

Lawyers for the Applicant

APPENDIX "E"

O'Looney, Cathal

From: creider@sunpac.com
 Sent: Tuesday, June 17, 2014 10:20 AM
 To: O'Looney, Cathal
 Subject: Fwd: PET OJ in Freezer

----- Forwarded message from Kevin Reider <kreider@sunpac.com> -----

Date: Wed, 9 Oct 2013 10:51:45 -0400
 From: Kevin Reider <kreider@sunpac.com>
 Reply-To: Kevin Reider <kreider@sunpac.com>
 Subject: PET OJ in Freezer
 To: Csaba Reider <creider@sunpac.com>, Garth Rombough <grombough@sunpac.com>

FYI

Sat down with Petric/Mandeep. The stuff was turning dark before we froze it, we did not freeze it until 6-8 months after production.

He believes to put into CANS we could blend it in @ around 30% old with 70% new. To mask the taste and colour. There is also concern from Mandeep that without a predictable production schedule (raws coming in on time), they can't plan to defrost and rework it on short notice. After being defrosted and dumped in drums, the product in the fridge has a short life span (2-3 days tops) to even be considered for blending, therefore, they need to plan in advance of the production run of OJ to use the inventory in the freezer and can't afford delays.

Cheers,

Kevin Reider

Director, Sales & Marketing

Sun Pac Foods Limited

Office: 905.789.5167

Cell: 416.561.9590

Sun Pac Foods Plant Tour

Confidentiality Notice

APPENDIX "F"

Raqu Aleman

From: Jason Spetter
Sent: Tuesday, June 17, 2014 11:08 AM
To: kbulmer@wiresjolleylp.com
Cc: Tony O'Brien; Cerrato, Gary
Subject: RE: 8527504 Canada Inc. v Sun Pac Foods

Krista,

With all due respect, the tone of your emails is not productive and we simply do not understand what is to be gained by this dialogue. However, we will, once again, attempt to answer respond to your queries and accusations.

The receiver is a court appointed officer with a mandate to maximize value for all stakeholders. It is not a specialist in the manufacturing of juice products. As Mr. Reider is well aware, the receiver engaged senior executives and staff of Sun Pac for several weeks at the outset of the receivership to assist with the sales process and to better understand the industry. While Mr. Reider was not specifically engaged by the receiver, he was present at the plant on a regular basis; he offered advice and opinions to the receiver for a number of weeks. One of the reasons the receiver was not more descriptive in its reports with respect to the Brazilian Juice was that all of the information it received came directly from Sun Pac's senior executives and staff.

The receiver had numerous discussions with Sun Pac's executives and staff regarding the Brazilian Juice. Sun Pac's own quality control manager advised that the Brazilian Juice could not be sold unless it was blended and repackaged – advice that was consistent with the information received from the other Sun Pac executives and staff who were engaged by the receiver. We do note that at no time did any of the Sun Pac executives or staff advise that the subject juice was saleable in its (then) present form. I refer to you to an internal email below sent by Kevin Reider to Csaba Reider and Garth Rombough regarding the Brazilian Juice dated October 9, 2013.

Your declaration that the receiver's concern regarding negligence was "misplaced" and "unfounded" is shocking. The subject juice was specifically banned by the FDA and, as acknowledged by Sun Pac's own employees, could only be sold if it was blended with fresh product – a practice that is not permitted in Canada according to the CFIA. You assert that the dating of the product was only for internal purposes and irrelevant once the product was frozen. With respect, your assertion is inconsistent with the information provided by to the receiver by representatives of Sun Pac.

Moreover, we wish to reiterate that the receiver had no funds to operate the plant – to either repackage or blend the subject juice.

We confirm that the receiver dealt with Raj Ramphal of the CFIA. The CFIA completed random testing of Sun Pac's products so it is not known whether the Brazilian Juice was specifically tested.

The receiver does not hold itself out to be an expert witness on these issues and we suggest your client develop its own evidence to persuade the Court on these matters rather than engage in partisan and pointless attacks on an Officer of the Court fulfilling its approved duties.

Jason Spetter B.A., LL.B.

Lipman, Zener & Waxman LLP

T 416 789 0652 x367 | F 416 789 9015

E jspetter@lzwlaw.com

Date: Wed, 9 Oct 2013 10:51:45 -0400
 From: Kevin Reider <kreider@sunpac.com>
 Reply-To: Kevin Reider <kreider@sunpac.com>
 Subject: PET OJ in Freezer
 To: Csaba Reider <creider@sunpac.com>, Garth Rombough <grombough@sunpac.com>

Sat down with Petric/Mandeep. The stuff was turning dark before we froze it, we did not freeze it until 6-8 months after production.

He believes to put into CANs we could blend it in @ around 30% old with 70% new. To mask the taste and colour. There is also concern from Mandeep that without a predictable production schedule (raws coming in on time), they can't plan to defrost and rework it on short notice. After being defrosted and dumped in drums, the product in the fridge has a short life span (2-3 days tops) to even be considered for blending, therefore, they need to plan in advance of the production run of OJ to use the inventory in the freezer and can't afford delays.

Cheers,
 Kevin Reider
 Director, Sales & Marketing
 Sun Pac Foods Limited
 Office: 905.789.5167

From: kbulmer@wiresjolleylp.com [mailto:kbulmer@wiresjolleylp.com]
 Sent: Monday, June 16, 2014 3:52 PM
 To: Jason Spetter
 Cc: Cerrato, Gary; Tony O'Brien
 Subject: RE: 8527504 Canada Inc. v Sun Pac Foods

Hi Jason:

Your assertions of negligence are misplaced and unfounded.

You appear to rely on the email sent by David Wires as the source of the receiver's information.

You say below: "The receiver was advised that the practice of freezing juice to suspend the expiration date and subsequently mixing same with fresh juice is a practice not permitted in Canada."

Where did the receiver get the idea that the frozen juice would be combined with new, raw materials? This was never going to be the case and this is not reflected in Mr. Wires' email. His email states that Sun Pac intended to thaw and repackage the juice. It does not state that Sun Pac intended to blend it with new, raw materials. Please show me how the receiver came to this erroneous conclusion because it does not come from Mr. Wires' email.

As explained in David's email, the dates stamped onto the packaging were irrelevant once the product was frozen. Did the receiver speak to someone at Sun Pac about this expiry date issue before discussing this with the CFIA? Again, your statement set out above is unhelpful since it incorrectly relies on the proposition that the frozen orange juice was going to be blended with new, raw product.

Your email does not assert that there was, in fact, an issue with the integrity of the seal on the packaging of the frozen product. The CFIA simply advised that it could be an issue. I do not see anything in your report or records to show that the receiver discussed this with anyone at Sun Pac or that a conclusion was made with respect to the seals on the frozen product.

You have failed to disclose the name of the person that the receiver dealt with at the CFIA. This is information we specifically requested and require. Please provide us with the relevant person's name so they can be contacted or we will need to seek court assistance to get this information.

You failed to confirm whether the CFIA actually tested the frozen orange juice in question. We are not concerned with the testing of other inventory. Please confirm. 110

Regards,

Krista Bulmer
Wires Jolley LLP
Barristers & Solicitors
90 Adelaide Street West
Suite 200
Toronto, Ontario
M5H 3V9
Direct: (416) 366-6516
Fax: (416) 366-0002
kbulmer@wiresjolleyllp.com

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Jason Spetter <jspetter@lzwlaw.com>

To "kbulmer@wiresjolleyllp.com" <kbulmer@wiresjolleyllp.com>
cc "Cerrato, Gary" <gcerrato@bdo.ca>, Tony O'Brien <TObrien@lzwlaw.com>

06/16/14 03:16 PM

Subject RE: 8527504 Canada Inc. v Sun Pac Foods

Krista,

I have now spoken to my client regarding your email of June 10, 2014 and our subsequent discussion. Below is a copy of a portion of an email we received from Mr. Wires on January 8, 2014 in response to reviewing the First Report of the Receiver:

—
"At page 13 paragraph 34 the report states:

"The raw materials of approximately \$352,000 included "tainted" or "stale" dated" juice concentrate of approximately \$100,000. The Debtor planned to convert this product by combining it with new raw materials. The Receiver contacted the Canadian Food and inspection Agency and was advised this tainted or stale dated product could not be combined with new raw materials and should be destroyed."

I have attached correspondence to Philip Taylor with the assertions relating to the Brazilian orange juice. The receiver has regrettably adopted the same unfounded allegations that Mr. Taylor mistakenly made as grounds for wrongfully refusing to advance funds to Sun Pac. The Receiver was given a copy of the correspondence to Mr. Taylor some time ago together with a copy of the Sun Pac statement of claim but appears not to have reviewed or understood the issues.

The receiver lacks the expertise to articulate the circumstances surrounding the Brazilian Orange Juice issue and CFIA's answer is a generic answer to an issue poorly articulated. The Receiver should have asked for particulars from the former management.

The juice was not tainted, or stale. It was put in to the freezer to put it into suspension until it was thawed and repackaged (the best before dates on the containers obviously look out of date, but that would have been relevant if sold as is, fresh). The Best Before Date is set by SunPac not CFIA.

The FDA banned Brazilian orange juice into the U.S. It was open to SunPac to re- package and send the product to International Cruise Ship customers as detailed in management's response to Philip Taylor.

The CFIA has no say if SunPac processed the juice for International Cruise Ship Lines. It is not a sale in Canada and if SunPac chose to sell this Brazilian Orange juice in Canada (which it can) SunPac would have reviewed and received permission from the CFIA before SunPac would go through the expense of re packaging."

The reference to "tainted" and "stale dated" to the Brazilian Orange Juice by the receiver related to the fact that the "best before" dating on the packaging had expired when the receiver had taken possession of Sun Pac's assets – which was acknowledged by your client in the above email. The email indicates that the "best before" dates are set internally but the receiver had no other measure for determining the expiration date.

The receiver spoke with a representative of the CFIA regarding the process of re-packaging juice that is described in Mr. Wires' email. The receiver was advised that the practice of freezing juice to suspend the expiration date and subsequently mixing same with fresh juice is a practice not permitted in Canada. Additionally, the CFIA agent advised the receiver that it should be concerned with the integrity of the bottle seals given that the juice had been frozen.

Apart from the concern over potential negligence issues with re-packaging the Brazilian Juice, the receiver had no funds to restart operations.

I also confirm that the receiver has not received the results of the testing from the CFIA.

Jason Spetter B.A., LL.B.
Lipman, Zener & Waxman LLP
T 416 789 0652 x367 | F 416 789 9015
E jspetter@lzwlaw.com

From: kbulmer@wiresjolleyllp.com [mailto:kbulmer@wiresjolleyllp.com]
Sent: Friday, June 13, 2014 9:25 AM
To: kbulmer@wiresjolleyllp.com
Cc: dewires@wiresjolleyllp.com; Jason Spetter
Subject: Re: 8527504 Canada Inc. v Sun Pac Foods

Hi Jason:

Thank you for speaking with me yesterday. I understand that you need some time to look into my questions but I ask that you get back to me by the end of day on Monday since we are still working on very tight time lines so need to keep this moving forward.

Regards,

Krista Bulmer
Wires Jolley LLP
Barristers & Solicitors
90 Adelaide Street West
Suite 200
Toronto, Ontario
M5H 3V9
Direct: (416) 366-6516
Fax: (416) 366-0002
kbulmer@wiresjolleyllp.com

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Krista Bulmer/WiresJolleyLLP

06/10/14 2:22 PM

To Jason Spetter <jspetter@lzwlaw.com>
 cc dewires@wiresjolleyllp.com
 Subject 8527504 Canada Inc. v Sun Pac Foods

Jason:

The falsely labelled "tainted" or "stale dated juice" referred to in the receiver's report was the subject of our objection to the receiver's reports, as noted in the endorsement of Justice Brown on January 9, 2014 and his Order dated June 3, 2014, attached below for ease of reference.

This issue is referred to as follows in both the first and second receiver's report:

34. The inventory also consisted of raw materials of approximately \$1,066,000 which included packing materials of \$715,000. The raw materials of approximately \$352,000 included "tainted" or "stale dated" juice concentrate of approximately \$100,000. The Debtor planned to convert this product by combining it with new raw materials. The Receiver contacted the Canadian Food and Inspection Agency and was advised this tainted or stale dated product could not be combined with new raw materials and should be destroyed. Without converting raw material and packaging into finished product, the recoveries from inventory were expected to be quite low.

These characterizations are false. Natasha Sharpe at Bridging Capital Inc. has asserted as fact what your reports have stated as hearsay.

In your receiver's report, there are dockets from the receiver relating to telephone conversations. A docket from Gary Cerrato dated December 4, 2013 refers to a "call from Food and Drug Inspection Agency re required inspection of finished goods at the plant; call with D. Ordon from DSL to discuss sale of Inventory in freezers..." A docket from Cathal O'Looney dated December 6, 2013 refers to an "onsite meeting and product review with the Canadian Food Inspection Agency"; and a docket from Gary Cerrato dated December 9, 2014 refers to a "follow up call from Food Inspection Agency on inspection".

Please confirm and provide the following:

1. Which of these telephone calls or meetings relate to the advice from the CFIA about the frozen orange juice concentrate that we presume was destroyed and, if none of these conversations, which of the receiver's representatives obtained this advice and when;
2. Whether any testing was completed at the request of the receiver on the subject frozen orange juice concentrate during the liquidation process and, if so, we would like to obtain a copy of the report;
3. What question was specifically posed to the CFIA by the receiver in respect to the subject frozen orange juice concentrate in response to which the CFIA advised the product must be destroyed;
4. Provide copies of any email correspondence between the receiver and CFIA regarding the frozen orange juice concentrate that was to be destroyed on the advice of CFIA; and
5. The name of the contact person at the CFIA who provided this advice to the receiver.

Please provide the name of the person at the Canadian Food and Inspection Agency so we can summons them as a witness.

Please respond to this as soon as possible since, if we have not received a response by Thursday, we will have to seek court assistance.

Regards,

Krista Bulmer
Wires Jolley LLP
Barristers & Solicitors
90 Adelaide Street West
Suite 200
Toronto, Ontario
M5H 3V9
Direct: (416) 366-6516
Fax: (416) 366-0002
kbulmer@wiresjolleyllp.com

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Windows Dial Call Logs View Help

Primary Phone Standard Windows

There are no active calls at this time

Play/Pa	Name	Phone Number	Start Time	Duration	Call State	From	Account Class
To	LIPMAN ZE...	(416) 789-1586	06/23/2014 4:03 PM	00:35		Toronto Cent...	
From	LIPMAN ZE...	(416) 789-3586	06/23/2014 4:03 PM	23:20		National PRI ...	
From	LIPMAN ZE...	(416) 789-1586	06/23/2014 3:12 PM	50:21		National PRI ...	
Missed	LIPMAN ZE...	(416) 789-3586	06/23/2014 2:40 PM	00:10		National PRI ...	
To		(416) 789-0652	06/23/2014 2:33 PM	00:20		Toronto Cent...	
Missed	LIPMAN ZE...	(416) 789-0652	06/23/2014 2:27 PM	00:10		National PRI ...	
To		(416) 789-0652	06/23/2014 2:10 PM	00:15		Toronto Cent...	
Missed	Erin Cerrato	(416) 960-4304	06/23/2014 1:24 PM	00:18		National PRI ...	
Message	Erin Cerrato	(416) 355-5324	06/23/2014 11:14 AM	03:18		National PRI ...	
From	Raymond Sl...	(416) 369-4149	06/20/2014 11:23 AM	17:17		National PRI ...	
To		(905) 726-4275	06/20/2014 11:09 AM	02:57		Toronto Cent...	
To	Raymond Sl...	(416) 369-4149	06/20/2014 10:46 AM	00:19		Toronto Cent...	
Message		(416) 777-2200	06/19/2014 11:45 AM	00:18		National PRI ...	
Missed	EFS CORP	(905) 670-4332	06/19/2014 10:00 AM	00:18		Toronto Cent...	
Missed		(647) 725-1475	06/19/2014 9:53 AM	00:18		Toronto Cent...	
From	Cathal O'Lo...	3213	06/18/2014 5:00 PM	00:44			
Missed	Cathal O'Lo...	3213	06/18/2014 4:35 PM	00:09			
Missed	Cathal O'Lo...	3213	06/18/2014 4:28 PM	00:09			
To		(416) 789-0652	06/18/2014 2:30 PM	00:19		Toronto Cent...	
To	Cathal O'Lo...	3213	06/18/2014 12:05 AM	01:51			
To	Cathal O'Lo...	3213	06/18/2014 11:02 AM	03:04			
To		(416) 789-0652	06/18/2014 11:01 AM	00:51		Toronto Cent...	
Missed	REC OS	(416) 231-2434	06/18/2014 10:58 AM	00:18		National PRI ...	
To		(677) 752-5926	06/17/2014 4:06 PM	00:32		Toronto Cent...	
To	Home	(905) 836-0706	06/17/2014 4:06 PM	01:02		Toronto Cent...	
To		(905) 751-1269	06/17/2014 3:56 PM	01:00		Toronto Cent...	
Transferred	REC OS	(416) 231-2434	06/17/2014 2:21 PM	00:50		National PRI ...	
To	Richard H. ...	(416) 863-1500	06/17/2014 11:04 AM	05:11		Toronto Cent...	
To	Cathal O'Lo...	3213	06/17/2014 11:02 AM	00:10			
Message	Richard H. ...	(416) 863-1500	06/17/2014 10:57 AM	05:18		Toronto Cent...	
To		(647) 790-1077	06/17/2014 10:31 AM	00:24		Toronto Cent...	
To		(416) 667-4651	06/17/2014 10:21 AM	01:17		Toronto Cent...	
From	LIPMAN ZE...	(416) 789-0659	06/17/2014 10:21 AM	23:41		National PRI ...	
To		(647) 790-1077	06/17/2014 10:20 AM	00:35		Toronto Cent...	
To		(416) 667-4651	06/17/2014 10:19 AM	00:26		Toronto Cent...	
To		(416) 789-0652	06/17/2014 10:18 AM	00:34		Toronto Cent...	
To	Kevin Leung	6228	06/17/2014 9:44 AM	00:20			
To		(289) 937-9989	06/16/2014 4:42 PM	12:17		Burlington PR...	
To		(289) 201-1723	06/16/2014 4:40 PM	00:20		Toronto Cent...	
To		(905) 845-0887	06/16/2014 4:30 PM	00:13		Toronto Cent...	

History Directory Voicemail Call Details

IBDO

FILE MEMORANDUM

FILE: (Check application box)	
Master	Financial
Assets	<input checked="" type="checkbox"/> Creditors
Claims	Accounts
Insurance	Daily Notes
Operations	Other

Name of Estate: Sun Pac Foods
 Discussion with: Michael Petric
 Telephone # to: 289 937 9989
 from: _____
 Re: Brazilian Frozen O.J.

Prepared By: [Signature]
 Date: 4:42 16 6 2014
Time Day Month Year

DETAILS OF CONVERSATION	ACTION REQUIRED
Cathal and I called Mike Petric, the former P.C. manager at Sun Pac Foods to re-confirm the Receiver's understanding of the quality and salability of the state dated Brazilian orange juice that was frozen in 1.36L bottles and stored in the freezer at Sun Pac Foods.	
I introduced myself to Mike and advised him that he was on the speaker phone and that Cathal O'Steeny was also present on the call.	
I advised Mike that the purpose of our call was to re-confirm the Receiver's understanding of the quality and salability of the Brazilian frozen orange juice stored in Sun Pac's freezer at the Receivership date.	
I advised Mike that the Receiver was advised that the juice was state dated and required blending before the juice could be sold.	
Mike confirmed that the company's plan was to blend the juice with fresh concentrate, repackage the juice and send/sell it to cruise line customers.	

IBDO

FILE MEMORANDUM

FILE: (Check application box)	
Master	Financial
Assets	Creditors
Claims	Accounts
Insurance	Daily Notes
Operations	Other

Name of Estate: San Pac Foods
 Discussion with: Michael Petric
 Telephone # to: 289 937 9989
 from: _____
 Re: Braggion Frozen OJ.

Prepared By: [Signature]
 Date: 4/21/10/6/2014
 Time Day Month Year

DETAILS OF CONVERSATION	ACTION REQUIRED
I advised Mike that the reverse was advised by management that the juice needed to be blended 70/30 min.	
Mike advised that the juice likely required blending in a 70/30 min but the blend would be 80/20 or different depending upon certain other factors.	
Mike advised that the juice was banned by the FDA, and could not be sold in the US due to the levels of carbohydrates. The product had apparently failed customer tests in 2012 and was not allowed to cross the border.	
Consequently, the company decided to freeze the juice to slow the aging process, re-ship the juice after blending, and sell to ethnic food customers in 4x6z cans.	
Mike advised that the frozen juice had discolored and would be subject to customer complaint if it were not blended with fresh juice. The juice had been sitting in the warehouse for a long time before it was frozen to suspend the aging process.	

BDO

FILE MEMORANDUM

FILE: (Check application box)	
Master	Financial
Assets	Creditors
Claims	Accounts
Insurance	Daily Notes
Operations	Other

Name of Estate: San Pac Foods
 Discussion with: Michael Petric
 Telephone # to: 259 937 9989
 from: _____
 Re: Brazilian Frozen O.J.

Prepared By: [Signature]
 Date: 4:42 | 16 | 6 | 2014
Time Day Month Year

DETAILS OF CONVERSATION	ACTION REQUIRED
I said to Mike that I was curious as to why the company, under the circumstances, did not simply attempt to sell the juice in Canada without blending it.	
Mike responded that he was interested in sales, but that it was his understanding that there were no alternate customers for the product in 1.36L bottles and that sales nationally were limited. Mike also stated that the product may have required testing to be sold in Canada.	
I asked Mike what was required to re-work the juice and he stated that:	
1) the product needed to be thawed	
2) the 1.36L bottles needed to be emptied into bins/trucks	
3) fresh concentrate needed to be added	
4) the juice needed to be run through the filters, equipment and other manufacturing processes.	
Mike advised that it would likely have taken just over a week to blend and re-package the juice into 46oz cans. The plant would have had to be fully operational and the receiver would have had to purchase all 4602 cans, as they were not in inventory at the receiving date.	

File: Sun Pac Foods (In Receivership)
Date: June 16th 4.30pm
Location: BDO Office
Transmission: Phone

Present: BDO – Gary Cerrato, Cathal O Looney
Ex Sun Pac Employee – Michael Petric (“MP”) (Quality Control Manager)

Re: Tainted/Stale Dated Sun Pac Product stored in the freezer

Purpose of discussion - To confirm the Receiver’s understanding around the issues concerning the above product was correct, thereby confirming that the product needed to be reworked as per the information provided by Csaba Reider (while the Receiver occupied Sun Pac’s premises)

Matters Discussed

- MP confirmed that the plan was to blend the subject juice with fresh concentrate and repackage.
- MP confirmed the product NEEDED reworking, in a ratio of probably 70/30 with other juice and that it could not be sold in its current condition.
- MP confirmed that the product was unusable in its current packaging. There was no market for this stale dated product in the 1.36 liter bottle; as a result, it needed to be repackaged in 46 oz cans. Sun Pac did not have the requisite materials on site to repackage the product and thus would have had to incur further costs to obtain same.
- MP confirmed that the product in question had discolored and would have been subject to customer complaint as a result. It had darkened and had been sitting in the warehouse for some time.
- Reworking and repackaging process would involve thawing the product, emptying the bottles and dumping same, adding fresh juice and running it through the filler system. Per MP this could probably have been done in a little over a week. However it would require the plant to be up and running again. In relation to the labor/manufacturing process, this would likely have resulted in significant costs on the basis that restarting such dated equipment would likely have caused numerous operational issues.
- FDA had banned the juice in the US due to the levels of carbendazim (the fungicide is used to control plant diseases in fruits amongst others) it contained. The product had failed a customs test in January 2012; as a result it was not allowed to cross the border.
- Whilst the product was frozen to slow down the aging process, it should be noted that the product was placed in the freezer at least a year before the Receiver was appointed.
- According to MP, there were no sales for this product in Canada; Sun Pac was selling only a very small amount nationally.

Conclusion

- The Quality Control Manager who has worked in Sun Pac for numerous years confirmed the only way this product could have been reused was to rework and repackage the product as

highlighted above. As the funds and the processes to carry out such an action were not available, this action could not be considered.

8527504 CANADA INC.
Applicant

-and-

SUN PAC FOODS LIMITED
Respondent
Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at
TORONTO

THIRD SUPPLEMENT TO
THE FIRST REPORT OF
BDO CANADA LIMITED,
IN ITS CAPACITY AS
COURT APPOINTED
RECEIVER
AUGUST 28, 2014

LIPMAN, ZENER & WAXMAN LLP
Barristers and Solicitors
1220 Eglinton Avenue West
Toronto, Ontario
M6C 2E3

JASON D. SPETTER
Law Society Registration No. 46105S

ANTHONY J. O'BRIEN
Law Society Registration No. 27440E
Tel.: (416) 789-0652
Fax: (416) 789-9015
Emails: jspetter@lzwlaw.com;
tobrien@lzwlaw.com

Lawyers for the Receiver

APPENDIX "E"

Court File No. CV-13-10331-OOCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

8527504 Canada Inc.

Applicant

- and -

Sun Pac Foods Limited

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O
1990, c. C. 43, AS AMENDED**

AFFIDAVIT OF GARY CERRATO

I, **GARY CERRATO**, of the Town of Newmarket, in the Province of Ontario, **MAKE OATH AND SAY** that:

1. I am a Vice President of BDO Canada Limited, and as such have personal knowledge of the matters referred to herein.
2. By Order of the Honourable Madam Justice Mesbur, dated November 12, 2013 (the "Order"), BDO Canada Limited was appointed Receiver (the "Receiver") of Sun Pac Foods Limited.
3. Pursuant to the Order, the Receiver has provided services and incurred disbursements which are more particularly described in the detailed accounts attached hereto and marked as Exhibit "A".

2.

- 4. The time shown in the detailed accounts attached as Exhibit "A" are a fair and accurate description of the services provided and the amounts charged by the Receiver, which reflect the Receiver's time as billed at its standard billing rates.
- 5. The Receiver requests that the Court approve its fees and disbursements for the period from March 31, 2014 to November 25, 2014 in the amount of \$36,826.27 plus HST of \$4,787.42 for a total of \$41,613.69, for the services set out in Exhibit "A".
- 6. This affidavit is sworn in support of the Receiver's motion for, among other things, approval of its fees and disbursements and those of its legal representatives and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto,)
 in the Province of Ontario, this)
 25th day of November 2014)

T. Montasano)
 Commissioner for Taking Affidavits, etc)

Gary Cerrato)
 Gary Cerrato, CIRP)

Antonio Montasano, a Commissioner, etc.,
 Province of Ontario, for BDO Canada LLP, Chartered
 Accountants and Consultants, BDO Canada Limited,
 Trustee in Bankruptcy, and their subsidiaries, associates
 and affiliates. Expires February 21, 2015.



Tel: 416 865 0210
 Fax: 416 865 0904
 www.bdo.ca

BDO Canada Limited
 123 Front Street W, Suite 1200
 Toronto ON M5J 2M2 Canada

INVOICE

Sun Pac Foods Limited
 10 Sun Pac Blvd.
 Brampton, ON
 L6S 4R5

<i>Date</i>	<i>Invoice No.</i>
25 November 2014	#

Re Sun Pac Foods Limited

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted Receivership Engagement for the period from to 31 March 2014 to 25 November 2014 as per the details below:

Our Fee in All	\$	36,642.30
Add Disbursements:		
Couriers	116.95	
Travel / Mileage	67.02	183.97
Sub-Total		36,826.27
HST - 13.0% (#R101518124)		4,787.42
Total Due	\$	<u>41,613.69</u>

Summary of Time Charges:

	Hours	Rate	Amount
B. Davidson, Partner	7.70	510.00	3,927.00
G. Cerrato, Senior Manager	50.00	450.00	22,500.00
C. O'Looney, Manager	40.35	200.00	8,070.00
M. Marchand, Manager	0.60	175.00	105.00
T. Montesano, Administrator	0.10	183.00	18.30
Administrative Support	15.50		2,022.00
TOTAL	<u>114.25</u>		<u>\$ 36,642.30</u>



Date	Professional	Description	Hrs.
31-Mar-14	Davidson, Blair	Deal with email retrieval request from Chaitons re Liquibrands litigation.	0.5
1-Apr-14	Cerrato, Gary	Conference call with H. Chaiton and B. Davidson to discuss report and his comments and suggested changes; amending report; updating R&D.	2.5
1-Apr-14	Davidson, Blair	Telephone call with H. Chaiton re report changes; follow up on email server options; review Sharpe affidavit re Liquibrands motion.	1.5
1-Apr-14	O'Looney, Cathal	Call with Bell in relation to reactivating the webmail hosting; discuss removal of 40 yard bins and compactors by Upak off site; create an inventory of the books and records for Iron mountain collection.	1.45
2-Apr-14	Cerrato, Gary	Update report and schedules based on comments; reviewing in detail professional fee invoice; discussions with B. Davidson re same; update R&D; approve cheque requisitions.	3.2
2-Apr-14	Davidson, Blair	Review report changes, analysis of costs and email status update to L. Kofman; telephone call with J. Spetter re report and court date.	1.2
2-Apr-14	O'Looney, Cathal	Discussion with Planet Earth re cheque and disposal cert due; drafting and send out rent invoice for Van de Water re February storage; WSIB calculation and payment.	1.3
3-Apr-14	O'Looney, Cathal	Call Ministry of Finance re EHT credit; cheque requisition.	0.5
4-Apr-14	Cerrato, Gary	Review of affidavit of time.	0.8
4-Apr-14	O'Looney, Cathal	Advise Basic Security systems of change of emergency contact as well as discussion of account and invoice issued; correspond with superior propane re property claim; correspond with Upak disposals re bins and compactors yet to be removed of site; discussion with R. Moonwan, CRA re status of outstanding Feb HST refund.	0.7



Date	Professional	Description	Hrs.
7-Apr-14	O'Looney, Cathal	Correspond with Superior Propane re picking up their property on site; correspond with Planet Earth Recycling re obtain outstanding cheque and cert of destruction re 38 skids of breadcrumbs; file March HST return; correspond with Loblaws re outstanding amounts on the AR listing for Western, National and Provigo; correspond with Ministry of Community & Social Services re support deduction notice for ex employee.	1.7
8-Apr-14	O'Looney, Cathal	Correspond with E Muto (landlord) in relation to the monitoring company for the site.	0.3
9-Apr-14	O'Looney, Cathal	Cheque/Lodgement requisition; discuss detail on outstanding invoices with Upak; correspond with resource re outstanding disposal fees.	0.75
10-Apr-14	Cerrato, Gary	Finalize report; assemble all report appendices and forward to counsel.	1.5
10-Apr-14	O'Looney, Cathal	Filling out and completion of finalization and vacating premises checklist.	0.5
11-Apr-14	O'Looney, Cathal	Correspond with N. Lee re Iron mountain storage and costs.	0.5
17-Apr-14	O'Looney, Cathal	Correspond with the department of homeland security in relation to request for information relating to Sun Pac product being imported; discuss NAFTA certificate requirements with Livingston International Inc to satisfy requirements; Call with ex employee in relation to WEPPA and severance payout.	0.85
22-Apr-14	O'Looney, Cathal	Correspond with Menkes and provide copy of hydro invoice; correspond with Oxyserv re property claim for the first aid tank sold at auction; correspond with Compression Tech on disputed service call bill.	0.4
23-Apr-14	Kanaris, Frieda	Telephone call to employee re WEPPA; review Statement of Account received from Service Canada.	0.1
23-Apr-14	O'Looney, Cathal	Call WSIB to close account.	0.2
24-Apr-14	O'Looney, Cathal	Deal with Sun Pac mail; file March 2014 HST return, obtain new access code from CRA.	1.05
28-Apr-14	Marchand, Matthew	Email correspondence with C. O'Looney re outstanding invoices; cheque requests.	0.3
2-May-14	Davidson, Blair	Review letter from counsel re litigation; various emails with Chaitons and J. Spetter.	1.0



Date	Professional	Description	Hrs.
5-May-14	O'Looney, Cathal	Call with creditor (Canadian Food Inspection Agency); review auction payout listing for leased asset.	0.4
6-May-14	O'Looney, Cathal	Update R&D schedule and draft the receiver's second report to the OSB; file April HST return.	1.75
7-May-14	O'Looney, Cathal	Correspond with Oxyserv re the compensation for the sale of the oxygen tank at the auction and draft cheque requisition.	0.4
8-May-14	O'Looney, Cathal	Correspond with Compression Technology and draft cheque requisition.	0.5
15-May-14	O'Looney, Cathal	Call with creditor (Canadian Adhesive) re update on receivership; correspond with T Bargen re outstanding rent payments due.	0.4
20-May-14	Cerrato, Gary	Responding to request for information to support litigation from H. Chaiton; discussions with C. O'Looney re same.	1.0
20-May-14	O'Looney, Cathal	Review requirements per Harvey Chaitons email and request and review director's expense package to be created.	0.3
21-May-14	O'Looney, Cathal	Draft updated assignment of intellectual properties for forwarding to solicitor of IP purchaser.	0.4
27-May-14	O'Looney, Cathal	Fill out and send water survey form for the Statistics Office after corresponding with the Region of Peel to obtain volume usage.	0.5
28-May-14	Cerrato, Gary	Review supplemental report.	0.5
28-May-14	O'Looney, Cathal	Correspond with Great West Life and Manulife insurance.	0.3
29-May-14	Davidson, Blair	Review and sign Supplementary Report.	0.5
29-May-14	O'Looney, Cathal	Correspond with Sonoco re labels on hand for destruction.	0.4
30-May-14	O'Looney, Cathal	Take call from creditor; calculate and e-file May 2014 HST return; correspond with Ministry of Finance re EHT, draft letter to request refund.	1.6
2-Jun-14	Cerrato, Gary	Review WEPPA calculations; prepare court approved distribution cheques.	1.0



Date	Professional	Description	Hrs.
3-Jun-14	Cerrato, Gary	Review information on tax losses re request from B. Davidson for Bridging Capital; review of Lamican OY Finland arbitration award received from J. Spetter; discussion with J. Spetter re same.	0.5
3-Jun-14	Davidson, Blair	Prepare for and attend court re distribution and activity approval motion; arrange tax returns for L Kofman.	1.0
3-Jun-14	O'Looney, Cathal	Correspond with L. Kofman and email him old Notice of Assessments and Tax Returns; review and upload court order to website; Draft T4.	1.1
6-Jun-14	Cerrato, Gary	Reviewing website; forward documents to include to update website.	0.5
6-Jun-14	O'Looney, Cathal	Arrange for upload of motion records on the website.	0.2
9-Jun-14	Cerrato, Gary	Review of WEPPA calculations; prepare court approved distribution cheques; review of correspondence received.	1.0
9-Jun-14	Montesano, Tony	WEPPA to Service Canada.	0.1
9-Jun-14	O'Looney, Cathal	Draft letters for priority claims to Mercer and Receiver General.	0.5
10-Jun-14	Cerrato, Gary	Attend to correspondence received; review email from J. Spetter.	0.9
11-Jun-14	Cerrato, Gary	Review of correspondence from J. Spetter; meeting with C. O'Looney re same; conference call with J. Spetter re tainted juice and issues re realization.	0.8
11-Jun-14	O'Looney, Cathal	Send out letters to employees re priority claims vacation pay; meeting with G Cerrato and J Spetter to discuss the tainted OJ issue.	0.9
12-Jun-14	O'Looney, Cathal	Call with Sun Pac creditor.	0.2
13-Jun-14	Cerrato, Gary	Reviewing WEPPA adjustments; adjusting schedule; call with Ministry of Labour re calculations required.	1.0
13-Jun-14	O'Looney, Cathal	Call with FLS Transportation Services Inc, creditor re unsecured funds.	0.2
16-Jun-14	Cerrato, Gary	Review of correspondence from counsel for K. Bulmer, counsel for C. Reider; conference calls with J. Spetter re same; conference call with C. O'Looney and M. Petric, former QC manager at Sun Pac to confirm the receiver's understanding that the Brazilian juice	2.5



Date	Professional	Description	Hrs.
		required reworking despite K. Bulmer's assertions to the contrary; further call with J. Spetter.	
16-Jun-14	O'Looney, Cathal	Call from Revenue Canada re the CRA property claim; Call from Sun Pac creditor re claims; Meeting with G Cerrato and M Petric re tainted OJ issues and drafting minutes of same; contact Green for Life re Ministry of the Environment charge re tonnage fees.	1.7
17-Jun-14	Cerrato, Gary	Calls with counsel re frozen OJ issues; conference call with counsel re further response; review email retrieved from system; searching for CFIA contact information.	2.0
17-Jun-14	Marchand, Matthew	Receive voicemail from and return call to Alexander from the Ontario Ministry of Environment re regulation 450/07 charges for industrial and commercial water users; email correspondence with G. Cerrato and C. O'Looney re same.	0.3
17-Jun-14	O'Looney, Cathal	Correspond with universal Door & Equipment re invoice received; search Sun Pac server for historic emails re OJ; conference call with G Cerrato and J Spetter to discuss to tainted OJ issue; read the notice of motion.	1.8
18-Jun-14	O'Looney, Cathal	Call with Ministry of Environment re Water consumption charges.	0.3
19-Jun-14	Cerrato, Gary	Call with J. Spetter re concerns over K. Bulmer email and receiver's response.	0.5
20-Jun-14	Cerrato, Gary	Follow up discussions with counsel on tainted OJ issues.	0.3
23-Jun-14	Cerrato, Gary	Review of correspondence from J. Spetter re tainted OJ; review of memo's to file re conversation with M. Petric; reviewing old file notes.	0.9
24-Jun-14	Cerrato, Gary	Call with J. Spetter re affidavit of M. Petric claiming juice was saleable; conference call with J. Spetter and K. Bulmer re contents of affidavit; discussions with C. O'Looney re contents of affidavit; review M. Petric affidavit; review of creditor correspondence received re sale of continental machinery.	2.7
24-Jun-14	O'Looney, Cathal	Read M Petric affidavit.	0.4



Date	Professional	Description	Hrs.
27-Jun-14	O'Looney, Cathal	Correspond with Ministry of Environment re Water usage and associated fees and draft letter and cheque requisition to pay for outstanding tonnage and manifest charges; Draft up and send out 2014 T4s for employees kept on by the receiver.	2.4
2-Jul-14	Cerrato, Gary	Call from J. Carhart re sale of his client's Continental closing machine.	0.5
2-Jul-14	O'Looney, Cathal	Draft T4 Summary and send along with T4s to CRA Ottawa; call and correspond with J Carhart re auctioned continental equipment; file June 2014 HST return.	1.4
3-Jul-14	Cerrato, Gary	Attend to correspondence received.	0.3
3-Jul-14	O'Looney, Cathal	Correspond with CRA and forward written direction re obtaining refund re EHT and closing the account.	0.5
4-Jul-14	O'Looney, Cathal	Cheque requisition and correspond with Bell.	0.3
7-Jul-14	O'Looney, Cathal	Correspond with the Canadian food Inspection Agency re closing the account.	0.4
10-Jul-14	Cerrato, Gary	Discussion issues with Brazilian OJ with B. Davidson in response to request for information from Chaitons LLP; call with J. Spetter re same; review of correspondence.	0.8
14-Jul-14	Davidson, Blair	Various discussions with H. Chaiton and G. Cerrato re frozen OJ.	1.0
15-Jul-14	Cerrato, Gary	Reviewing correspondence from Lipman Zener Waxman re frozen OJ issue; discussions with B. Davidson re same; call with H. Chaiton re same; call with J. Spetter; reviewing memo's to file.	2.0
15-Jul-14	O'Looney, Cathal	Review minutes re frozen juice.	0.1
17-Jul-14	Cerrato, Gary	Reviewing information in preparation to prepare supplemental court report on the frozen OJ issue.	0.8
18-Jul-14	O'Looney, Cathal	Cheque requisition for receivers fees.	0.1
22-Jul-14	Cerrato, Gary	Drafting supplement to court report.	2.5
23-Jul-14	Cerrato, Gary	Reviewing court materials received from J. Spetter re 852 and Liquidbrands; compiling information and draft court report outline.	2.0



Date	Professional	Description	Hrs.
23-Jul-14	O'Looney, Cathal	Correspond with Bell re billing; cheque requisition.	0.3
24-Jul-14	Cerrato, Gary	Working on court report.	2.0
28-Jul-14	Cerrato, Gary	Reviewing information and drafting court report.	2.0
29-Jul-14	Cerrato, Gary	Finalizing draft of court report; meeting with C. O'Looney re same.	3.0
29-Jul-14	Davidson, Blair	Review Supplement to Report re Brazilian OJ; discuss with G. Cerrato.	1.0
29-Jul-14	O'Looney, Cathal	Review court report on the Brazilian OJ.	0.2
30-Jul-14	Cerrato, Gary	Discuss court report with B. Davidson; make amendments to court report.	1.0
31-Jul-14	Cerrato, Gary	Discussions with J. Spetter re court report and developments at Court re 852 and Liquibrands.	0.5
5-Aug-14	O'Looney, Cathal	File July GST return.	0.2
7-Aug-14	O'Looney, Cathal	Call re EHT refund.	0.1
8-Aug-14	Cerrato, Gary	Review of correspondence received from M. Dato from BMO and arrange for C. O'Looney to close bank accounts; review of finalization checklist re any outstanding items since previous court report.	1.5
8-Aug-14	O'Looney, Cathal	Discussion with R Tymczyszyn (BWR) creditor of Sun Pac re update on receivership.	0.2
11-Aug-14	O'Looney, Cathal	Correspond with S Gerkes re EHT refund and forward requisite fax.	0.2
25-Aug-14	Cerrato, Gary	Review of report; call with J. Spetter to review and amend receiver's supplemental report; review of correspondence received.	1.5
28-Aug-14	Cerrato, Gary	Final revisions and discussions with J. Spetter re report.	2.5
2-Sep-14	Cerrato, Gary	Discussion with counsel re report.	0.5
5-Sep-14	O'Looney, Cathal	Correspond with CRA re Sun Pac and the requirement to view records associated with the RP002.	0.3
8-Sep-14	O'Looney, Cathal	Correspond with Tormont (unsecured creditor).	0.2



Date	Professional	Description	Hrs.
9-Sep-14	O'Looney, Cathal	File Aug HST Return; call with CRA to determine why July HST refund is being held; call with Onager Solutions Inc. re government grant agreements with Sun Pac.	0.4
12-Sep-14	O'Looney, Cathal	Cheque requisition.	0.2
16-Sep-14	O'Looney, Cathal	Correspond with I. Yaun re Sun Pac payroll audit.	0.2
30-Sep-14	O'Looney, Cathal	File September HST return; enquire re July refund.	0.6
1-Oct-14	O'Looney, Cathal	Draft letter and arrange necessary documentation to be forwarded to the CRA to conduct the audit on the RT002 account and forward relevant correspondence in relation to the audit and claim carried out on the RT0001 account.	1.8
21-Oct-14	O'Looney, Cathal	Call with S. Zhang re HST audit for 2012; draft letter to Bank of Montreal to close old Sun Pac bank accounts with no activity.	0.5
27-Oct-14	O'Looney, Cathal	Discussion with Mr. Jaun (CRA) re T4 filed in 2011 re V. McEwan and next steps to solve the differing filed returns; discussion with K Mithradeva (ex employee of Sun Pac) re severance pay queries.	0.8
29-Oct-14	O'Looney, Cathal	Call with I. Yuan (CRA) re queries on 2013 T4's and provide explanations.	0.3
3-Nov-14	O'Looney, Cathal	Correspond with Ministry of Finance re closure of EHT account.	0.5
4-Nov-14	O'Looney, Cathal	Interim OSB report	1.0
5-Nov-14	O'Looney, Cathal	File October 2014 HST return.	0.3
7-Nov-14	O'Looney, Cathal	Correspond with Hydro One Brampton re outstanding amount.	0.2
14-Nov-14	O'Looney, Cathal	Discussion and with M. Calderon (Ministry of Labour) re 10 employees claim under the employee Standards Act.	0.5
19-Nov-14	O'Looney, Cathal	Draft Court Report; run R&D.	0.7
24-Nov-14	O'Looney, Cathal	Draft Court Report.	1.0
25-Nov-14	Cerrato, Gary	Call with J. Spetter to discuss content of report; review draft report; amendments to third report.	2.5

APPENDIX "F"

Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 c. C. 43, AS AMENDED

AFFIDAVIT OF JASON SPETTER

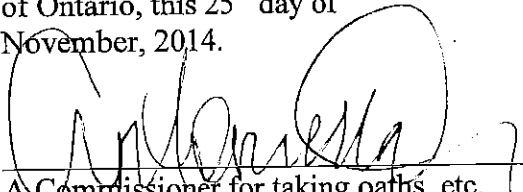
I, JASON SPETTER, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

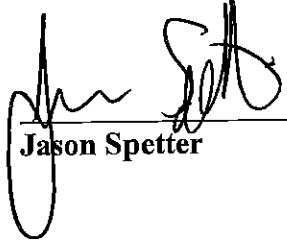
1. I am solicitor with the law firm of Lipman, Zener & Waxman LLP ("Lipman") lawyers for BDO Canada Limited ("BDO") in its capacity as receiver of the assets, undertaking and properties of the Respondent in this proceeding and as such have knowledge of the matters to which I hereinafter depose.
2. Now produced and shown to me and marked as **Exhibit "A"** to this my Affidavit is a true copy of an account issued by Lipman to BDO for the period between March 28, 2014 and June 10, 2014.
3. Now produced and shown to me and marked as **Exhibit "B"** to this my Affidavit is a true copy of an account issued by Lipman to BDO for the period between June 11, 2014 to November 25, 2014.

4. I confirm that the accounts described above accurately reflect the services provided by Lipman in this matter and the fees and disbursements claimed by it during the period described above.

5. Additionally, attached hereto and marked as **Exhibit "C"** to this my Affidavit is a summary of additional information with respect to the aforementioned account indicating all members of Lipman who worked on this matter during the period described above, including their year of call to the bar and I hereby confirm that this represents an accurate account of such information.

6. This Affidavit is sworn in support of the Receiver's motion in connection to the Receiver's Third Report, and for no other or improper purpose.

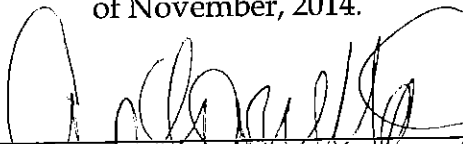
SWORN BEFORE ME)
at the City of Toronto, in the Province)
of Ontario, this 25th day of)
November, 2014.)
)
A Commissioner for taking oaths, etc.)



Jason Spetter

Antonietta Apa, a Commissioner, etc.,
Province of Ontario, for Lipman, Zener & Waxman LLP,
Barristers and Solicitors.
Expires November 17, 2017.

This is **Exhibit "A"** referred to in the
Affidavit of Jason Spetter
sworn before me, this 25th day
of November, 2014.



A Commissioner for taking Affidavits, etc.

Antonietta Apa, a Commissioner, etc.,
Province of Ontario, for Lipman, Zener & Waxman LLP,
Barristers and Solicitors.
Expires November 17, 2017.

IN ACCOUNT WITH
LIPMAN, ZENER & WAXMAN LLP
 Barristers and Solicitors
 1220 Eglinton Avenue West
 Toronto, Ontario
 M6C 2E3
 (416) 789-0652

Our File No. 63412

HST # R119437119

June 10, 2014

BDO Canada Limited
 123 Front Street West, Suite 1200
 Toronto, Ontario
 M5J 2M2

Attention: Blair Davidson

Re: Sun Pac Foods Limited Receivership

FOR PROFESSIONAL SERVICES RENDERED with respect to providing ongoing advice to BDO Canada Limited with respect to the receivership of Sun Pac Foods Limited since our previous account of March 27, 2014, including:

Attending to reviewing motion materials submitted by Liquibrands;
 Attending to correspondence and communications with client;
 Attending to correspondence and communications with all parties re: motion scheduling;
 Attending to correspondence with Sally Kwon;
 Attending to correspondence and communications with counsel for 852 and Liquibrands;
 Attending to reviewing and revising Notice of Motion and Supplement to the Receiver's Second Report;
 Attending to correspondence with counsel re: form a draft Order re: June 3rd distribution motion;
 Attending to preparing for interim distribution motion;
 Attending at interim distribution motion;
 Attending to reporting to client;
 Attending to correspondence with service list;
 Attending to correspondence with Mercer and client;
 Attending to preparing for and attending at the 9:30 commercial list chamber's appointment;
 Attending to numerous and ongoing reporting to client; and
 Attending to any and all professional services rendered but not herein enumerated.

OUR FEE

\$11,552.50

Allan L. Lipman: 3.8 hours x \$500.00 per hour = \$1,900.00
 Anthony J. O'Brien: 6.2 hours x \$400.00 = \$2,480.00
 Jason D. Spetter: 15.8 hours x \$400.00 per hour = \$6,320.00
 Ian J. Klaiman: 3.1 hours x \$275.00 per hour = \$852.50

TAXABLE DISBURSEMENTS:

Photocopies	\$266.50	
Mileage/Parking	\$22.00	
<i>Profile Legal Services</i>		
re: file Motion Record	<u>\$45.00</u>	
TOTAL TAXABLE DISBURSEMENTS:	\$333.50	
TOTAL FEE AND DISBURSEMENTS:		\$11,886.00
13.0% H.S.T.:		<u>\$ 1,545.18</u>
TOTAL FEES, DISBURSEMENTS & H.S.T.:		\$13,431.18

NON-TAXABLE DISBURSEMENTS:

<i>Minister of Finance</i>		
re: fee to file Motion Record	\$127.00	\$127.00

BALANCE DUE AND OWING: \$13,558.18

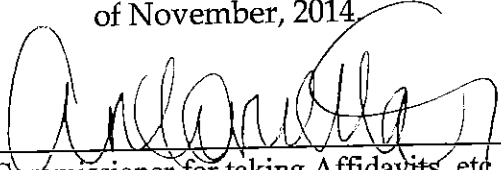
THIS IS OUR ACCOUNT HEREIN

LIPMAN, ZENER, & WAXMAN LLP

Per: Allan L. Lipman
ALL/ra
E.& O.E.

NOTE: This account bears interest from one month after delivery in accordance with the rate prescribed by Section 128 of the Courts of Justice Act.

This is **Exhibit "B"** referred to in the
Affidavit of Jason Spetter
sworn before me, this 25th day
of November, 2014.



A Commissioner for taking Affidavits, etc.

Antonietta Apa, a Commissioner, etc.,
Province of Ontario, for Lipman, Zener & Waxman LLP,
Barristers and Solicitors.
Expires November 17, 2017.

IN ACCOUNT WITH
LIPMAN, ZENER & WAXMAN LLP
Barristers and Solicitors
1220 Eglinton Avenue West
Toronto, Ontario
M6C 2E3
(416) 789-0652

Our File No. 63412

HST # R119437119

November 25, 2014

BDO Canada Limited
123 Front Street West, Suite 1200
Toronto, Ontario
M5J 2M2

Attention: Blair Davidson

Re: Sun Pac Foods Limited Receivership

FOR PROFESSIONAL SERVICES RENDERED with respect to providing ongoing advice to BDO Canada Limited with respect to the receivership of Sun Pac Foods Limited since our previous account of June 10, 2014, including:

Attending to correspondence with counsel for Liquibrands;
Attending to communications with client re: issues raised by Liquibrands in e-mail of June 10, 2014;
Attending to telephone discussion with counsel for Liquibrands;
Attending to reviewing Affidavit of Michael Petric;
Attending to telephone discussion with counsel for Liquibrands;
Attending to reviewing Liquibrands Motion Record re: Motion for leave to submit Affidavit of Michael Petric;
Attending to communications with counsel for 852;
Attending to reviewing and revising 3rd Report;
Attending to reviewing the pro forma Third Supplement to the First Report of BDO Canada limited and to providing comments with respect to same;
Attending to reviewing Motion material for Liquibrands re: July 18, 2014 motion;
Attending to reviewing ongoing correspondence with counsel for Liquibrands and 852 re: July 18, 2014 Motion;
Attending to correspondence with counsel for Liquibrands and 852 re: July 18, 2014 Motion and scheduling of August 21, 2014 Motion;
Attending to reviewing Order of Justice Brown re: July 18, 2014 Motion;
Attending to reporting to client;
Attending to correspondence and conference call with all counsel re: August 21, 2014 Motion;
Attending at 9:30 a.m. Commercial Court Scheduling Appointment;
Attending to correspondence and communications with Receiver re: 3rd Supplemental Report;
Attending to correspondence with Lamican Oy;
Attending to reviewing Lamican Oy's Application Record and draft Order;

LIPMAN, ZENER & WAXMAN LLP

-2-

Attending to correspondence and communications with counsel for Lamican Oy;
 Attending to reviewing Justice Penny's Enforcement re: Lamican's Motion;
 Attending to preparing for November 28, 2014 Motion;
 Attending to all correspondence and communications with Receiver;
 Attending to any and all professional services rendered but not herein enumerated.

OUR FEE: **\$13,287.50**

Allan L. Lipman: 1.5 hours x \$500.00 per hour = \$750.00
 Anthony J. O'Brien: 7.0 hours x \$400.00 = \$2,800.00
 Jason D. Spetter: 24.0 hours x \$400.00 per hour = \$9,600.00
 Ian J. Klaiman: 0.50 hours x \$275.00 per hour = \$137.50

TAXABLE DISBURSEMENTS:

Photocopies	\$237.50	
Mileage/Parking	<u>\$18.00</u>	
TOTAL TAXABLE DISBURSEMENTS:	\$255.50	<u>\$255.50</u>
TOTAL FEE AND DISBURSEMENTS:		\$13,543.00
13.0% H.S.T.:		<u>\$1,760.59</u>
TOTAL FEES, DISBURSEMENTS & H.S.T.:		\$15,303.59
BALANCE DUE AND OWING:		<u>\$15,303.59</u>

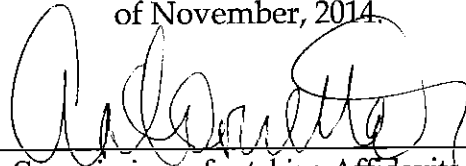
THIS IS OUR ACCOUNT HEREIN

LIPMAN, ZENER, & WAXMAN LLP

Per: Allan L. Lipman
 ALL/ra
 E.& O.E.

*NOTE: This account bears interest from one month after delivery in accordance
 with the rate prescribed by Section 128 of the Courts of Justice Act.*

This is **Exhibit "C"** referred to in the
Affidavit of Jason Spetter
sworn before me, this 25th day
of November, 2014.

A handwritten signature in black ink, appearing to read 'Antonietta Apa', written over a horizontal line.

A Commissioner for taking Affidavits, etc.

Antonietta Apa, a Commissioner, etc.,
Province of Ontario, for Lipman, Zener & Waxman LLP,
Barristers and Solicitors,
Expires November 17, 2017.

SUMMARY OF ADDITIONAL INFORMATION
RE: ACCOUNTS OF JUNE 10, 2014 AND NOVEMBER 25, 2014

<u>Lawyers:</u>		<u>Year of Call:</u>
Allan L. Lipman	-	1975
Anthony J. O'Brien	-	1986
Jason D. Spetter	-	2002
Ian J. Klaiman	-	2010

8527504 CANADA INC.
Applicant

-and-

SUN PAC FOODS LIMITED
Respondent

Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
TORONTO

AFFIDAVIT OF
JASON SPETTER

LIPMAN, ZENER & WAXMAN LLP
Barristers and Solicitors
1220 Eglinton Avenue West
Toronto, Ontario
M6C 2E3

JASON D. SPETTER
Law Society Registration No. 46105S

ANTHONY J. O'BRIEN
Law Society Registration No. 27440E
Tel.: (416) 789-0652
Fax: (416) 789-9015
Emails: jspetter@lzwlaw.com;
tobrien@lzwlaw.com

Lawyers for the Receiver

8527504 CANADA INC.
Applicant

-and-

SUN PAC FOODS LIMITED
Respondent

Court File No. CV13-10331-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
TORONTO

MOTION RECORD
(Returnable
Friday, November 28, 2014)

LIPMAN, ZENER & WAXMAN LLP
Barristers and Solicitors
1220 Eglinton Avenue West
Toronto, Ontario
M6C 2E3

JASON D. SPETTER
Law Society Registration No. 46105S

ANTHONY J. O'BRIEN
Law Society Registration No. 27440E

Tel.: (416) 789-0652
Fax: (416) 789-9015
Emails: jspetter@lzwlaw.com;
tobrien@lzwlaw.com

Lawyers for the Receiver