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Ex Parte Department  
Hearing Date: 8/15/2024  
Hearing Time: 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, a national banking  
association, in its capacity as Agent,

Petitioner,

v.

NORTHWEST FISH COMPANY, LLC, a  
Washington corporation; PETER PAN  
SEAFOOD COMPANY, LLC, an Alaska  
limited liability company, ALASKA FISH  
HOLDINGS, LLC, a Delaware limited liability  
company, and RAYMOND MACHINE SHOP,  
LLC, a Washington limited liability company,

Respondents.

CASE NO. 24-2-08809-1 SEA

RODGER MAY'S MOTION TO APPROVE  
SALE OF SPECIFIC ESTATE ASSETS AND  
DISBURSE PROCEEDS TO WELLS FARGO  
BANK

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## I. INTRODUCTION

Rodger May respectfully brings this Motion to approve the sale of certain assets of the Receivership estate of Peter Pan Seafoods Company, LLC (“Peter Pan”). Specifically, Mr. May offers to acquire the following assets (“Assets at Issue”) for \$15 million:

1. Industrial Warehouse Facility – Seattle, WA (Ballard)
2. Processing Facility – Port Moller, AK
3. Fuel Business – King Cove, AK
4. Peter Pan Fish and Ikura Branded IP
5. Quota
6. Northwest Fish Company, LLC
7. Frozen Inventory
8. Fishermen’s Loans

Mr. May – a Peter Pan owner, employee, creditor, and bidder – has been actively and diligently working to maximize the value of the Receivership estate since initiation of this Receivership. First, since the Appointment Order, Mr. May has personally facilitated the sale of millions of dollars of Peter Pan’s frozen inventory (more than anyone else), significantly benefitting the Receivership estate and its creditors.<sup>1</sup> Second, Mr. May successfully sought modification of the April 25, 2024 Order Appointing General Receiver (“Appointment Order”), to replace a provision that permitted the Receiver to conduct private, *non-public sales*, with a provision that required *public sales*, after notice, a hearing, and Court approval. This change was necessary to comply with statutory and due process considerations, and also fostered a more transparent and competitive bidding process. Third, over the past two months, Mr. May has repeatedly approached the Receiver with various purchase offers designed to retire, or substantially reduce, Peter Pan’s massive outstanding debt to its senior secured creditor, Wells Fargo Bank, N.A. (“Wells Fargo”).<sup>2</sup> Those efforts have largely been ignored or rebuffed. Fourth, Mr. May has opposed (and continues to oppose) payment of sales commissions to Hilco Corporate Finance, LLC (“Hilco”), who purports to be the Receiver’s exclusive selling agent, but whose employment has not been approved by the

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<sup>1</sup> 7/17/24 Declaration of Rodger May ISO Motion to Approve Sale of Specific Estate Assets (“May Decl.”), ¶4.

<sup>2</sup> May Decl., ¶¶16-20.

1 Court, as required by RCW 7.60.180. Hilco's various relationships with creditors, bidders, and/or  
2 other interested parties (including other Peter Pan owners) create a conflict of interest or appearance  
3 of a conflict that is disqualifying under that statute. Particularly where Hilco has done nothing to  
4 facilitate any sale to Mr. May, Hilco should not receive a commission – which would preserve value  
5 for the estate and its creditors.

6 Despite all of Mr. May's efforts over the past few months, most of Peter Pan's material  
7 assets remain unsold. This likely is due, *at least in part*, to Hilco-related delays (Hilco's contract  
8 with the Receiver was not signed until *June 25* and still has not been submitted for Court approval).  
9 And, because few assets have been sold, Peter Pan remains indebted to Wells Fargo for  
10 approximately \$48 million (the "Bank Debt"), with interest accruing at approximately \$500,000  
11 month and total monthly carrying costs likely falling within a range of \$1.2 - \$1.5 million.<sup>3</sup> The  
12 longer Peter Pan's assets remain unsold, the more estate value is lost, to the detriment of creditors  
13 behind Wells Fargo.

14 Without any other clear path to retire the Bank Debt, eliminate the other significant carrying  
15 costs, and preserve Peter Pan's value, Mr. May brings this Motion to accelerate the sale process.  
16 Indeed, Mr. May's intent and hope is that this Motion motivates others to *outbid him*.<sup>4</sup> Combined  
17 with a separate \$31 million sale of Peter Pan's canned inventory that purportedly has been imminent  
18 for weeks<sup>5</sup>, a sale of the Assets at Issue for \$15 million (or more) would nearly pay off the entire  
19 Bank Debt, eliminating millions in wasteful carrying costs.

20 Accordingly, Mr. May respectfully asks the Court to authorize the sale of the Assets at Issue  
21 to him for \$15,000,000 – or to any credible higher bidder coming forward prior to the hearing set  
22 for this Motion. As provided in the Appointment Order, all proceeds should then immediately be  
23 disbursed to Wells Fargo to pay down the Bank Debt.

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24  
25 <sup>3</sup> May Decl., ¶15.

26 <sup>4</sup> *Id.*, ¶24.

<sup>5</sup> As described below, the Receiver and/or Hilco have provided repeated assurances that this sale is imminent.

## II. FACTS

### A. **Rodger May Owns 50% of Peter Pan and Holds Roughly \$40,000,000 in Peter Pan Debt**

Rodger May has been in the fishing industry for approximately 40 years, starting out in college.<sup>6</sup> He has been involved in building businesses that have purchased and sold approximately \$100,000,000 in seafood products on an annualized basis, totaling billions of dollars of seafood over his lengthy career specializing in Alaskan products.<sup>7</sup>

Mr. May is Peter Pan's President and Chief Growth Officer.<sup>8</sup> He holds a 50% ownership interest in Peter Pan and also is a significant creditor, owed approximately \$40,000,000.<sup>9</sup> Due to Peter Pan's lack of payments to certain vendors, Mr. May also is exposed to eight-figure claims on personal guarantees, while other unsecured creditors were paid in full.<sup>10</sup> Since appointment of the Receiver on April 25, he has been personally responsible for the sale of millions of dollars of Peter Pan's frozen inventory for the benefit of the Receivership estate and its creditors.<sup>11</sup> Although no one has sold more product than Mr. May, other than one single commission on a recent sale, he has received no compensation for his services since February 2024.<sup>12</sup> More than anyone, Mr. May has a vested interest in seeing that maximum value is achieved for Peter Pan's assets in this Receivership.

### B. **The Appointment Order and Subsequent Modification to Require Notice, a Hearing, and Court Approval for Asset Sales**

Wells Fargo commenced this Receivership on April 22, 2024 and, on April 25, the Court adopted Well Fargo's proposed Appointment Order.<sup>13</sup> Section 4(a) of the Appointment Order

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<sup>6</sup> May Decl., ¶2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, ¶3.

<sup>9</sup> *Id.*, ¶¶3, 12.

<sup>10</sup> *Id.*, ¶10.

<sup>11</sup> *Id.*, ¶4.

<sup>12</sup> *Id.*, ¶4.

<sup>13</sup> Declaration of Christopher Wion ISO Motion to Approve Sale of Specific Estate Assets ("Wion Decl."), ¶7, Ex. E ("Appointment Order").

1 permitted the Receiver to sell estate assets privately, *without* notice, a hearing, or Court approval, in  
2 contravention of RCW 7.60.260 and fundamental due process principles.

3 On June 4, Mr. May filed his Motion to Modify Appointment Order (Dkt. 42), seeking to  
4 revise ¶ 4(a) of the Appointment Order. On June 25, following collaborative and successful  
5 negotiations with the Receiver, Wells Fargo, and others, the Court entered the Stipulated Order  
6 Amending Order Appointing General Receiver (Dkt. 85), incorporating into ¶ 4(a) the following  
7 notice terms governing the Receiver's asset sales:

| Asset Type                 | Notice Period |
|----------------------------|---------------|
| Price < \$5mm              | 7 days        |
| Price ≥ \$5mm but < \$15mm | 14 days       |
| Canned Inventory           | 14 days       |
| Price ≥ \$15mm             | 21 days       |
| Real Property Assets       | 28 days       |

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13 **C. Mr. May's Repeated Efforts to Acquire (or Bid up) Peter Pan Assets**

14 Since entry of the original Appointment Order, Mr. May has approached the Receiver with  
15 multiple offers to acquire Peter Pan assets in exchange for cash payments to repay the Bank Debt  
16 and end or lessen the seven-figure monthly carrying costs.<sup>14</sup>

17 On May 21, Mr. May submitted a \$58 million offer for certain specified assets.<sup>15</sup> Not only  
18 was the offer not accepted, but Mr. May received no response at all.<sup>16</sup> This sale would have retired  
19 the Bank Debt in full and saved the company millions of dollars.

20 On May 24, Mr. May was advised that Peter Pan's competitor, Silver Bay Seafoods, LLC  
21 ("Silver Bay") had offered \$35 million to acquire Peter Pan's interest in the KWL labeling  
22 warehouse in Kent, WA, and all canned inventory.<sup>17</sup> Later that day, undersigned counsel advised  
23

24 <sup>14</sup> May Decl., ¶¶16-21.

25 <sup>15</sup> *Id.*, ¶16; *see also* Wion Decl., ¶3, Ex. A.

26 <sup>16</sup> May Decl., ¶16.

<sup>17</sup> *Id.*, ¶17; Wion Decl., ¶4, Ex. B.

1 counsel for the Receiver that Mr. May would pay \$36 million for the same assets.<sup>18</sup> Mr. May again  
2 received no response, other than a suggestion to break apart the offer by asset.<sup>19</sup>

3 On May 29, undersigned counsel passed along Mr. May's *informal* \$31 million offer for the  
4 canned inventory, \$4.6 million for KWL, and \$4.3 million for the Peter Pan's processing facility in  
5 Port Moller, Alaska (with each offer to be considered separately or together, at the Receiver's  
6 discretion).<sup>20</sup> On June 12, the Receiver asked that Mr. May submit a formal bid for Peter Pan's  
7 canned inventory by June 13 (later extended to June 17).<sup>21</sup> On June 16, Mr. May submitted his  
8 *formal* \$31 million bid for Peter Pan's canned inventory.<sup>22</sup>

9 On June 21, Hilco's Senior Managing Director, Teri Stratton, sent Mr. May an email  
10 identifying Hilco as "the Receiver's selling agent" and asking a few basic questions about his  
11 canned inventory bid.<sup>23</sup>

12 **D. Hilco Is Not Authorized to Serve as the Receiver's "Selling Agent" under RCW**  
13 **7.60.180**

14 In January 2024, when Peter Pan was contemplating a sale of assets to Silver Bay, Peter  
15 Pan's former CEO, Kevin Bixler, hired Hilco to be Peter Pan's selling agent.<sup>24</sup> The January 2024  
16 contract ("Old Hilco Contract") included a commission structure for any Peter Pan asset sales.<sup>25</sup>  
17 Shortly thereafter, Mr. Bixler took a position with Silver Bay.<sup>26</sup>

18 In April 2024, Silver Bay acquired Peter Pan's Valdez production facility.<sup>27</sup> Hilco –  
19 working on commission – was instrumental in pushing through the sale of the Valdez facility to

20 \_\_\_\_\_  
21 <sup>18</sup> May Decl., ¶17; Wion Decl., ¶4, Ex. B.

22 <sup>19</sup> May Decl., ¶18.

23 <sup>20</sup> *Id.*, ¶18; Wion Decl., ¶5, Ex. C.

24 <sup>21</sup> May Decl., ¶20.

25 <sup>22</sup> *Id.*, Wion Decl., Ex. F.

26 <sup>23</sup> May Decl., ¶20, Ex. C.

<sup>24</sup> *Id.*, ¶5.

<sup>25</sup> Wion Decl., Ex. G.

<sup>26</sup> May Decl., ¶5.

<sup>27</sup> *Id.*, ¶6.

1 Silver Bay in the week before this Receivership *despite* Mr. May’s strenuous objections based on  
2 material last minute changes to the deal structure.<sup>28</sup>

3 Since then, Silver Bay has continued its efforts to acquire Peter Pan assets on terms that are  
4 below fair market value and contrary to terms agreed prior to the Receivership. Hilco continues to  
5 be actively engaged with Silver Bay to facilitate these arrangements, which are *not* in the best  
6 interests of Peter Pan’s creditors.

7 While the Receiver was not bound by the Old Hilco Contract (the Receiver could reject it  
8 under both the Appointment Order (¶ 15) and RCW 7.60.130), it became clear that the Receiver  
9 intended to enter into a new agreement with a similar, but slightly altered, compensation structure.  
10 On June 12, undersigned counsel sent an email to the Receiver’s counsel requesting a copy of the  
11 Old Hilco Contract as well as “a copy of the Receiver’s proposed contract with Hilco, once  
12 finalized[.]”<sup>29</sup> On June 17, undersigned counsel sent a follow-up email to the Receiver’s counsel  
13 again requesting the Hilco contracts (and other documents).<sup>30</sup> The email reflected the  
14 understanding “that the Receiver is negotiating a new arrangement with Hilco – *assuming that*  
15 *Hilco meets the criteria of RCW 7.60.180(1)-(2)* – and will be providing us a copy when that is  
16 finalized.”<sup>31</sup>

17 On June 25, undersigned counsel sent another email to the Receiver’s counsel, primarily as a  
18 response to Ms. Stratton’s June 21 email to Mr. May and objecting to Hilco’s engagement absent  
19 Court approval and opposing any commission on a sale to Mr. May, for which Hilco has had no  
20 involvement.<sup>32</sup>

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24 <sup>28</sup> May Decl., ¶6.

25 <sup>29</sup> Wion Decl., ¶10, Ex. H.

26 <sup>30</sup> *Id.*

<sup>31</sup> *Id.*, (emphasis added).

<sup>32</sup> *Id.*, ¶10.



1 The Receiver’s counsel responded promptly, providing a copy of both the Old Hilco  
2 Contract and the new contract executed earlier that day (“New Hilco Contract”).<sup>33</sup> The New Hilco  
3 Contract calls for Hilco to receive a 2% commission on the sale of most estate assets. The  
4 Receiver’s counsel advised that he expected to file the New Hilco Contract no later than the  
5 following Monday, July 1, and also requested that “Teri [Stratton] be the single point of contact  
6 regarding the terms and conditions of Rodger’s offer.”<sup>34</sup>

7 Although the Appointment Order (¶ 11) *requires* Court approval for any professional  
8 engaged by the Receiver who meets the qualifications and requirements of RCW 7.60.180, and the  
9 New Hilco Contract was signed on June 25, no Court approval for Hilco has been sought or granted.

10 **E. Without Court Approval, Hilco Starts Soliciting Bids, Advising that Sales would Close**  
11 **“within the next thirty days” and Circulates a One-Page Marketing “Teaser”**

12 On June 25 – right after execution of the New Hilco Contract – Hilco appears to have  
13 contacted members of the Alaska fishing industry to solicit bids for certain Peter Pan assets. One  
14 example of Hilco’s apparent form email states, in pertinent part:

15 Peter Pan Seafoods is now in a receivership, and we have been  
16 retained to sell all of the company’s assets, including:

- 17 • Processing plants
- 18 • Fish camps and support facilities
- 19 • Fish meal plant equipment
- 20 • Crab quotas
- 21 • Fresh/frozen and Ikura Peter Pan brands
- 22 • Various plant-related supplies and machinery




23 **Based on your position in the industry, we thought you might have**  
24 **a particular interest in the Peter Pan fish and/or roe brands, fuel**  
25 **business, and crab quotas. We aim to close transactions for these**  
26 **assets within the next thirty days. We also encourage you to review**  
**the attached teaser for additional assets that may be of interest.**<sup>35</sup>

<sup>33</sup> Wion Decl., ¶¶9, 10; Ex. G (Old Hilco Contract); Ex. I (New Hilco Contract).

<sup>34</sup> *Id.*, ¶11.

<sup>35</sup> May Decl., Ex. E (bold in original, underlining added).

The referenced “attached teaser” is a one-page marketing summary, with this asset description:<sup>36</sup>

| Processing Facilities   |                 |  | Miscellaneous Assets  |  |
|---|-----------------|--|---|--|
| Asset   | Location        | Asset Detail <sup>1</sup>  |   |  |
|  | Dillingham, AK  | <ul style="list-style-type: none"><li>65.7 acre, 130k sf. facility</li><li>Fresh, frozen, canned salmon</li><li>900k lbs./day processing capacity</li><li>RE appraised value: \$11MM</li><li>M&amp;E appraised value: \$5.1MM</li></ul>      | <ul style="list-style-type: none"><li>➤ <b>Fleet Support Facilities at Naknek and Sand Point</b><ul style="list-style-type: none"><li>Naknek: 225 acre, 132k sf. facility</li><li>Sand Point: 24 acres; 55k sf facility with partial fire damage</li></ul></li><li>➤ <b>Seattle (Ballard) Industrial Warehouse Facility</b><ul style="list-style-type: none"><li>8k sf. facility; \$2.8MM “as-is” appraised value</li></ul></li><li>➤ <b>Fuel Business located at King Cove</b><ul style="list-style-type: none"><li>Total tank capacity of 675,032 gallons</li><li>Fuel sales at ~19% gross margin, limited overhead required</li><li>Pro forma FY 2023 revenue \$16.7MM and EBITDA \$2.8MM</li></ul></li><li>➤ <b>Hopeland F001 SF-80T Series Wet Fish Meal Plant</b><ul style="list-style-type: none"><li>New, unassembled equipment ready for transport</li></ul></li><li>➤ <b>Peter Pan Fish and Ikura Branded IP (Near Term Bid Deadline)</b><ul style="list-style-type: none"><li>Brands and associated supplies and packaging</li></ul></li><li>➤ <b>Crab Quota (Near Term Bid Deadline)</b><ul style="list-style-type: none"><li>Various IPQs, including BBR, EBT, and WBT</li></ul></li><li>➤ <b>Variety of Processing Plant Supplies</b></li></ul> |  |
|  | Port Moller, AK | <ul style="list-style-type: none"><li>125.2 acre, 187k sf. Facility</li><li>Sockeye, king, coho, chum salmon</li><li>400k lbs./day processing capacity</li><li>RE appraised value: \$22MM</li><li>M&amp;E appraised value: \$5.7MM</li></ul> |   |  |
|  | King Cove, AK   | <ul style="list-style-type: none"><li>30.9k acre, 318k sf. Facility</li><li>Salmon, cod, pollock, crab</li><li>900k lbs./day processing capacity</li><li>RE appraised value: \$12MM</li><li>M&amp;E appraised value: \$8.4MM</li></ul>       |   |  |

1) RE Appraisals are on an “as-is” basis; M&E appraisals are orderly liquidation values.

**F. Hilco Refuses to Explain Its Role in “Verifying” a Multi-Million Dollar Reduction in the Sale of Supplies to Silver Bay**

Before the Receivership, Peter Pan and Silver Bay agreed to a multi-phase deal that (among other things) allowed Silver Bay to lease certain Peter Pan facilities for the 2024 summer season at very low cost, along with an obligation to buy certain materials and supplies initially represented to be worth approximately \$12,000,000.<sup>37</sup> In May, Silver Bay re-negotiated a new agreement with the Receiver that includes a “verification process” to identify supplies to be purchased and determine price.<sup>38</sup>

For the past several weeks, Hilco apparently has worked through the “verification process” with Silver Bay, which has led to a dramatic price reduction; Silver Bay apparently now will pay only \$1-\$2,000,000.<sup>39</sup> Equally troubling, Hilco has refused Mr. May’s requests for a list of the supplies being sold to Silver Bay.<sup>40</sup> Hilco’s refusal to justify a multi-million dollar reduction in sale

<sup>36</sup> May Decl., Ex. F.

<sup>37</sup> *Id.*, ¶8.

<sup>38</sup> Wion Decl., Ex. D.

<sup>39</sup> May Decl., ¶8.

<sup>40</sup> *Id.*, ¶8; Ex. A.

1 price and refusal to even identify what Peter Pan supplies are being sold to Silver Bay is alarming  
2 and further supports the existence of a serious conflict of interest between Hilco and Silver Bay.

3 **G. Hilco Continues to Delay the Sale of Peter Pan’s Canned Inventory / Brite Stack for**  
4 **Approximately \$31 Million, without Explanation**

5 On June 28, Mr. May asked Ms. Stratton for an update on the status of his \$31 million bid  
6 for Peter Pan’s canned inventory – informally submitted on May 29 and then formally submitted on  
7 June 16.<sup>41</sup> Despite having the competing bids from Mr. May and Silver Bay for weeks, Ms.  
8 Stratton responded that no decision had been made about which bid to accept.<sup>42</sup> Mr. May  
9 responded that he “wanted to make sure you didn’t have any further follow up questions for me”  
10 and also asked when a final decision would be made and the issue presented to the Court.<sup>43</sup> Ms.  
11 Stratton had no further questions for Mr. May and replied that “We are hopeful that we can make a  
12 decision early next week.”<sup>44</sup> An additional two weeks has now passed, with no update or apparent  
13 progress.<sup>45</sup>

14 On July 2, undersigned counsel spoke with the Receiver’s counsel by telephone, again  
15 reiterating Mr. May’s opposition to payment of a commission to Hilco in connection with any sale  
16 to him in which Hilco had no role.<sup>46</sup> On July 3, the Receiver’s counsel reiterated the Receiver’s  
17 opposition to a sale that circumvented Hilco and, again, directed Mr. May to Hilco for any potential  
18 offer.<sup>47</sup>

19 Because Hilco (a) has been largely unhelpful and uncommunicative, (b) has not been  
20 approved by the Court as the Receiver’s selling agent, and (c) has engaged in conduct and  
21 maintained relationships that reflect a conflict of interest or at least the appearance of a conflict that

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22 <sup>41</sup> May Decl., ¶21.

23 <sup>42</sup> *Id.*

24 <sup>43</sup> *Id.*

25 <sup>44</sup> *Id.*

26 <sup>45</sup> *Id.*

<sup>46</sup> Wion Decl., Ex. J.

<sup>47</sup> *Id.*

1 are disqualifying under RCW 7.60.180, Mr. May brings this Motion as the only path to accelerate  
2 sales that should have proceeded long before the New Hilco Contract was signed on June 25.

3 **H. The Assets at Issue on this Motion**

4 As noted above, Mr. May is offering to purchase the following Assets at Issue:

- 5 1. Industrial Warehouse Facility – Seattle, WA (Ballard)
- 6 2. Processing Facility – Port Moller, AK
- 7 3. Fuel Business – King Cove, AK<sup>48</sup>
- 8 4. Peter Pan Fish and Ikura Branded IP
- 9 5. Quota<sup>49</sup>
- 6 6. Northwest Fish Company, LLC
- 7 7. Frozen Inventory
- 8 8. Fishermen’s Loans

10 The first five assets listed above are expressly identified in Hilco’s “teaser”.<sup>50</sup> The sixth  
11 listed asset is a wholly-owned non-operating subsidiary, with no tangible assets.<sup>51</sup> The seventh  
12 refers to Peter Pan’s remaining frozen seafood inventory.<sup>52</sup> The eighth refers to certain outstanding  
13 loans that Peter Pan has extended to various fishermen.<sup>53</sup>

14 **I. Closing of the Proposed Sale and Conditional Hilco Commission**

15 If his offer is the winning bid for the Assets at Issue, Mr. May intends to close the  
16 transaction and pay the \$15,000,000 purchase price to the Receiver within five (5) Court days after  
17 Court approval.<sup>54</sup> For the reasons stated elsewhere in this Motion, Mr. May objects to the payment  
18 of any commission to Hilco if he is the winning bidder. However, to the extent that Hilco remains  
19 involved in the sale process and is successful in soliciting the high bid from a competing bidder for  
20 the Assets at Issue, Mr. May will agree to waive his objection to Hilco’s receipt of a commission on  
21

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22 <sup>48</sup> May Decl., ¶23; Ex. G (letter from City of King Cove stressing urgent community need for fuel business)

23 <sup>49</sup> *See id.* Ex. F (“teaser”, identifying Individual Processing Quotas (IPQs), including BBR, EBT, and WBT).

24 <sup>50</sup> *Id.*

25 <sup>51</sup> May Decl., ¶2.

26 <sup>52</sup> For any inventory sold after the filing of this Motion, it is Mr. May’s intent that the \$15,000,000 purchase price would be reduced dollar-for-dollar for any sales prior to closing.

<sup>53</sup> Mr. May’s intent is that the loans would be assigned to him for further administration/collection.

<sup>54</sup> May Decl., ¶24.

1 that specific sale. Mr. May otherwise reserves all rights to oppose Hilco's engagement as violative  
2 of RCW 7.60.180 or otherwise to contest Hilco's entitlement to, or amount of, any commission.

### 3 III. ISSUES

4 Should the Court:

- 5 1. Approve the sale of the Assets at Issue (a) to Rodger May for \$15,000,000 or (b) to a  
6 higher bidder submitting a credible bid prior to the hearing on this Motion?
- 7 2. Authorize disbursement of the proceeds from the sale of the Assets at Issue to Wells  
8 Fargo to pay down the Bank Debt?
- 9 3. Disallow payment of a commission to Hilco if Mr. May is the high bidder for the  
10 Assets at Issue, where:
- 11 (a) Hilco's employment has not been approved by the Court as required by RCW  
12 7.60.180,  
13 (b) Hilco is believed to have a disqualifying conflict of interest, or appearance of  
14 a conflict, under RCW 7.60.180, and  
15 (c) Hilco has done nothing of value to facilitate the sale to Mr. May of the Assets  
16 at Issue?
- 17 4. Allow payment of a commission to Hilco if, and only if, a third party is the  
18 successful high bidder for the Assets at Issue?

### 19 IV. EVIDENCE

20 This Motion is based upon the accompanying declarations of Rodger May and Christopher  
21 Wion, with exhibits, together with the files and pleadings in this matter.

### 22 V. ARGUMENT

#### 23 A. **The Court Should Approve a Sale of the Listed Assets to Mr. May for \$15,000,000 – Or 24 Any Credible Higher Bid Submitted Prior to the Hearing Date**

25 Mr. May has made a good faith, credible offer for the Assets at Issue. Other interested  
26 bidders have the opportunity to outbid Mr. May's \$15,000,000 offer and Mr. May *encourages*  
overbids. There is no reasonable justification to further postpone sale of these assets under the  
circumstances. The sale to the high bidder should be free and clear of all liens and rights of  
redemption, in accordance with RCW 7.60.260(2).

1 **B. All Sale Proceeds Should Be Immediately Disbursed to Wells Fargo to Pay Down the**  
2 **Bank Debt**

3 In accordance with ¶ 4.a of the Appointment Order, all proceeds of the sale of Peter Pan's  
4 assets are to be disbursed to Wells Fargo (*aka* "Agent"), to pay down the Bank Debt:

5 Except as otherwise set forth herein, all proceeds from the sale or  
6 lease of Assets (other than any collections projected to be received,  
7 retained and used by Debtors in accordance with paragraph 8) shall be  
8 paid to Agent and applied in accordance with the terms of the Credit  
9 Agreement and the other Loan Documents (including the Permitted  
10 Holder Subordination Agreement and any other subordination  
11 agreement), the Bank Product Agreements until the Obligations are  
12 paid in full in accordance with the Credit Agreement....

13 Sale of the Assets at Issue should be no different. To the extent that Mr. May is the high  
14 bidder, *all* sale proceeds should be disbursed to Wells Fargo to pay down the Bank Debt. As noted  
15 above (and further detailed below), Mr. May would withdraw his opposition to payment of a  
16 commission to Hilco *only* in the event that Hilco is responsible for the sale of the Assets at Issue to  
17 a higher bidder.

18 **C. Hilco Is Not Entitled to Receive a Commission on Any Sale to Mr. May**

19 Under ¶ 11 of the Appointment Order, the terms of the Receiver's engagement of any  
20 "accountants, investment bankers, and other professional service providers" are required to "be  
21 established by separate motion pursuant to RCW 7.60.180." No such motion has been filed for  
22 Hilco. Mr. May believes that Hilco has a disqualifying conflict of interest – or at least the  
23 appearance of a conflict of interest – in light of its relationship with one or more creditors, bidders,  
24 and/or other interested parties, including but not limited to Silver Bay.

25 RCW 7.60.180 requires court approval prior to a receiver's engagement of a professional  
26 service provider. The statute disqualifies professionals who (a) "hold or represent an interest  
adverse to the estate," (b) are employed by, represents, or have another "relationship with a creditor  
or other party in interest" that is *undisclosed*, or (c) *disclose* such relationship *unless* "the court  
determines that there is no actual conflict of interest or inappropriate appearance of a conflict":

1 (1) The receiver, with the court's approval, may employ one or more  
2 attorneys, accountants, appraisers, auctioneers, or other  
3 professional persons that do not hold or represent an interest  
adverse to the estate to represent or assist the receiver in carrying  
out the receiver's duties.

4 (2) A person is not disqualified for employment under this section  
5 solely because of the person's employment by, representation of,  
6 or other relationship with a creditor or other party in interest, if  
7 the relationship is disclosed in the application for the person's  
employment and if the court determines that there is no actual  
conflict of interest or inappropriate appearance of a conflict.

8 While the Receiver attempted to renew the relationship with Hilco by executing the New  
9 Hilco Contract on June 25, Hilco is believed to have relationships with creditors, bidders, owners,  
10 and/or other interested parties that are disqualifying under RCW 7.60.180. Notably, Hilco's  
11 engagement has not been approved by the Court, as required by that statute. In the event that the  
12 Receiver files a motion to employ Hilco, Mr. May reserves the right to oppose such motion by  
13 presenting additional evidence and argument that Hilco has a disqualifying conflict of interest or  
14 appearance of a conflict. Notwithstanding the foregoing, Mr. May commits *not* to oppose  
15 disbursement of a sales commission to Hilco in the event that Hilco is successful in soliciting the  
16 high bid for the Assets at Issue.

## 17 VI. CONCLUSION

18 For the foregoing reasons, Mr. May respectfully requests that this Motion be granted and  
19 that the Court enter the (Proposed) Order submitted herewith.

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DATED this 17<sup>th</sup> day of July, 2024.

SUMMIT LAW GROUP, PLLC  
*Attorneys for Creditor Rodger May*

I CERTIFY THAT THIS MEMORANDUM CONTAINS 3,938 WORDS,  
IN COMPLIANCE WITH THE LOCAL CIVIL RULES.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing to be served, via KCSC ECF and email, upon the following:

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24 DATED this 17<sup>th</sup> day of July, 2024.

25 *s/Sharon K. Zankich*

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RODGER MAY'S MOTION TO APPROVE SALE OF  
SPECIFIC ESTATE ASSETS AND DISBURSE  
PROCEEDS TO WELLS FARGO BANK - 16  
[24-2-08809-1 SEA]

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