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2024 JUL 19 09:00 AM  
KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE #: 24-2-08809-1 SEA

Ex Parte – Special Set  
Hearing Date: August 2, 2024  
Hearing Time: 1:30 p.m.

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

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

Petitioner,

vs.

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.

No. 24-2-08809-1 SEA

RECEIVER’S MOTION FOR ORDER  
(1) APPROVING SALE OF ASSETS  
AND (2) AUTHORIZING RECEIVER  
TO ENTER INTO AND CLOSE  
ASSET PURCHASE AGREEMENT  
AND SUBCONTRACTOR  
AGREEMENT

Stapleton Group, Inc. (“Receiver”), the court-appointed General Receiver for Northwest Fish Company, Peter Pan Seafood Company, LLC, Alaska Fish Holdings, LLC, and Raymond Machine Shop, LLC, (collectively, the “Respondents”) and its assets (the “Receivership Estate”), hereby moves the Court (“Motion”) for an order (1) approving the sale of the canned inventory assets of the Receivership Estate (“BriteStack Assets”) free and clear

RECEIVER’S MOTION TO APPROVE SALE - 1

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1 of liens, except as provided in the APA (as defined below) pursuant to RCW 7.60.260 (“Sale”),  
2 and (2) authorizing Receiver to cause respondent Peter Pan Seafood Company, LLC (“PPSF”)  
3 to execute and close the Asset Purchase Agreement (“APA”) and Subcontractor Agreement  
4 (“Subcontract”); and together with the APA the “Agreements”) with Silver Bay Seafoods, LLC,  
5 the proposed purchaser (“Buyer” or “SBS”), which are attached as Exhibit A and Exhibit B to  
6 the Declaration of Jake DiIorio (“DiIorio Decl.”) filed in support of this Motion.  
7

8 The Receiver is confident that, through the Motion, it is presenting the highest and best  
9 offer for the BriteStack Assets to this Court for approval. In support of the Motion, the Receiver  
10 relies on the DiIorio Decl. and the Declaration of Teri Stratton (“Stratton Decl.”) submitted in  
11 connection with this Motion, and the pleadings and papers on file with the Court.  
12

## 13 I. FACTS AND BACKGROUND

### 14 A. **The Receiver’s Appointment**

15 The Court appointed the Receiver as a general receiver with respect to the Receivership  
16 Estate pursuant to the *Order Appointing General Receiver* entered by this Court on April 25,  
17 2024, as amended and restated by the *Stipulated Order Amending Order Appointing General*  
18 *Receiver* entered by the Court on June 25, 2024 (together, the “Order Appointing Receiver”).  
19 Since its appointment, the Receiver has focused on monetizing the assets of the Receivership  
20 Estate for the benefit of its creditors.  
21

22 Pursuant to the Order Appointing Receiver, the Receiver is authorized to “sell or lease  
23 the [Receivership’s] Assets” provided that notice and a hearing is provided for all sales outside  
24 the ordinary course of business. Here, under the terms of the Order Appointing Receiver, a  
25 sale of the canned inventory is subject to a 14-day notice period.  
26

1 The Order Appointing Receiver provides further that sales of Receivership Estate  
2 assets—such as the BriteStack Assets—may “be effected free and clear of liens and of all  
3 rights of redemption” subject to RCW 7.60.260.

4 **B. Marketing the BriteStack Assets**

5 Prior to the entry of the Order Appointing Receiver, PPSF retained an investment  
6 banker, Hilco Corporate Finance, LLC (“Hilco”) as part of the effort to market its assets to  
7 potential buyers, including the BriteStack Assets. Stratton Decl., ¶ 3. Specifically, from  
8 Hilco’s retention in December 2023 through the appointment of the receiver on April 25, 2024,  
9 PPSF and Hilco conducted meetings or calls with 104 potential buyers of assets of the  
10 Receivership Estate, including the BriteStack Assets. *Id.* at ¶ 4.

11 From the Receiver’s appointment through July 2024, Receiver and Hilco continued the  
12 efforts that started prior to the Receiver’s appointment, contacting 40 new potential buyers as  
13 well as some of the previously contacted potential buyers. *Id.* at ¶ 5; DiIorio Decl., ¶ 4. Efforts  
14 to sell the BriteStack Assets were complicated by PPSF’s inability to marshal sufficient  
15 personnel and inventory to meet its obligations to provide canned inventory under a contract  
16 (“USDA Prime Contract”) with the United States Department of Agriculture (“USDA”), under  
17 which PPSF’s performance obligations began to come due on May 16, 2024 and run through  
18 February 28, 2025. DiIorio Decl., ¶ 5. Specifically, the BriteStack Assets, which consist of  
19 100% of PPSF’s remaining canned salmon inventory, are only sufficient to allow PPSF to  
20 partially but not completely fulfill its obligations under the USDA Prime Contract without  
21 incurring additional costs and delay attempting to procure the additional canned inventory  
22 necessary to fully meet those obligations. *Id.* at ¶ 6. Moreover, it is not certain that the Receiver  
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1 would be successful in its attempts to procure the additional canned inventory should it attempt  
2 to do so. *Id.* Further, pursuant to a licensing agreement entered into by PPSF prior to the  
3 appointment of the Receiver as part of an asset sale transaction as to its brands, PPSF is not  
4 able to label and sell canned salmon inventory with its brands except in connection with the  
5 USDA Prime Contract. *Id.* These complications contributed to the Receiver's decision to sell  
6 the BriteStack Assets separately from other assets in the Receivership Estate, and to do so in  
7 connection with seeking to subcontract its obligations under the USDA Prime Contract to the  
8 purchaser of the BriteStack Assets. DiIorio Decl., ¶ 7. Accordingly, negotiations related to the  
9 sale of the BriteStack Assets also included discussion of the potential buyer's willingness and  
10 ability to assume and fulfill PPSF's obligations under the USDA Prime Contract. *Id.*

11  
12 The Receiver received two bids to purchase the BriteStack Assets and assume PPSF's  
13 obligations under the USDA Prime Contract. *Id.* at ¶ 8; Stratton Decl., ¶ 6. The two bidders  
14 had access to the same information, and the Receiver and its agents engaged with both bidders  
15 to gather the additional information requested by them as they deemed necessary for the  
16 submission of their bid. *Id.* The Receiver and its agents also engaged with each bidder in order  
17 to evaluate the merits of each bid. *Id.* The Receiver carefully considered each of the bids,  
18 including proposed purchase price, information received from each bidder regarding its  
19 financial and technical ability to perform the obligations to be assumed under the USDA Prime  
20 Contract, the bidders' relative willingness to assume outstanding liabilities and expenses in  
21 connection with storage of the BriteStack Assets, and indemnification terms offered by each  
22 of the bidders. DiIorio Decl., ¶ 8; Stratton Decl., ¶¶ 6-7. Each bidder confirmed to the Receiver  
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1 or its agents that they received all of the information they needed to make their bids. DiIorio  
2 Decl., ¶ 8; Stratton Decl., ¶ 6.

3 The negotiations over the terms of the Agreements were arms'-length, and Receiver  
4 believes that SBS has at all times acted in good faith in connection with the proposed  
5 BriteStack Asset transactions. DiIorio Decl., ¶ 9. Ultimately, based on the financial condition  
6 of PPSF, the marketing efforts that occurred prior to and after the appointment of the Receiver,  
7 the limited marketplace for the specialized goods that make up the BriteStack Assets, and  
8 SBS's agreement to assume and ability to fulfill PPSF's obligations under the USDA Prime  
9 Contract, Receiver believes that the proposed purchase price and other value provided by SBS  
10 represents fair value for the BriteStack Assets, and has concluded that the SBS transaction is  
11 the highest and best purchaser of the BriteStack Assets. *Id.* at ¶ 10.

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14 **C. Terms of APA**

15 As proposed in the APA, the purchase price for the BriteStack Assets is \$27,314,433.76  
16 ("Purchase Price"), and also includes other consideration as provided in the APA, including  
17 Buyer's assumption of liabilities in an amount no less than \$2,286,034. See DiIorio Decl., Ex.  
18 A. As is more specifically described in the APA, the Purchase Price is to be paid to the  
19 Receivership Estate through (a) payments made by SBS upon the APA's closing and on  
20 October 1, 2024, and (b) application of amounts received by the Receiver under the USDA  
21 Prime Contract to the Purchase Price, all of which will be applied upon receipt to the  
22 obligations owed to Respondents' first priority secured lender. *Id.*

23  
24 The Sale is subject to certain contingencies, including the following: (1) execution of  
25 the Subcontract, (2) PPSF's provision of a complete list of Seafood Product Association codes  
26

1 for the BriteStack Assets on or before July 12, 2024 (which has been satisfied), (3) SBS shall  
2 have completed its physical inspection of the BriteStack Assets and determined in its  
3 reasonable discretion that all of the BriteStack Assets are present and at least 97% of them are  
4 in a form and condition that meets their assigned Seafood Product Association codes, provided  
5 that this condition is deemed waived if SBS has not completed its inspection on or prior to the  
6 Closing, (4) the approval of the Sale and the Agreements by this Court pursuant to RCW  
7 7.60.260 as modified by the Amended Order Appointing Receiver, upon 14 days' notice has  
8 been made to all required parties under RCA 7.60.190(6), (5) all of PPSF's representations and  
9 warranties in Section 3 of the APA are materially true and correct without giving effect to any  
10 knowledge qualifiers, and Seller having delivered a certificate to Buyer confirming this, and  
11 (6) this Court's approval of the APA and the Closing shall have occurred on or before August  
12 6, 2024. *Id.*

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15 **D. Terms of Subcontract**

16 The Subcontract provides that, in exchange for receipt of USDA Prime Contract  
17 payments of \$29,379.554.40, SBS will assume and fulfill all of PPSF's obligations to the  
18 USDA under the Prime Contract. See DiIorio Decl., Ex. B. As the Subcontract is structured,  
19 Receiver receives and retains the payments received from the USDA, which are applied against  
20 the Purchase Price and paid to reduce the Respondents' first priority secured loan, until the  
21 Purchase Price is fully paid under the terms of the APA. *Id.* Thereafter, USDA payments are  
22 to be transferred to SBS within three (3) business days of receipt by the Receiver. *Id.* Neither  
23 of the Agreements limit the Receiver's ability to seek out a higher and better offer for the  
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1 BriteStack Assets until after Closing (as defined in the APA) has occurred. See DiIorio Decl.,  
2 Exs. A–B.

3 **E. Overbid Reimbursement Terms**

4 The APA also provides that upon the occurrence of certain circumstances that are  
5 beneficial to the Receivership Estate, the Receivership Estate will pay an overbid  
6 reimbursement to SBS in an amount up to \$500,000 for its expenses incurred in connection  
7 with the Agreements (the “Overbid Reimbursement”). DiIorio Decl., Ex. A. The terms of the  
8 Agreements were subject to extensive negotiations, and considerable time, effort and expense  
9 by all parties. *Id.* at ¶ 14. The Receivership Estate received material benefits from the  
10 Agreements by setting a floor for the BriteStack Assets. *Id.* SBS communicated to the Receiver  
11 that the Overbid Reimbursement was a requirement to enter into the Agreements. *Id.*

12  
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14 The Overbid Reimbursement arises only if i) Court Approval and Closing does not  
15 occur on or before August 6, 2024 and Receiver closes a transaction with and receives payment  
16 from a third party for all or substantially all of the BriteStack Assets (“Third-Party  
17 Transaction”); provided, however, that the Overbid Reimbursement shall not be payable to  
18 SBS if the failure to consummate the Closing with SBS is due primarily to any action or  
19 inaction of SBS (including termination by SBS), the failure of the Court to approve the sale to  
20 SBS for any reason other than Court approval of a higher Third-Party Transaction, or if no  
21 Third-Party Transaction closes. See DiIorio Decl., Ex. A.

22  
23 The Receiver believes the foregoing Overbid Reimbursement provisions are fair and  
24 reasonable in light of the anticipated or actual harm caused by a breach, the difficulties of proof

1 of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.  
2 *Id.* at ¶ 13.

## 3 **II. ISSUES PRESENTED**

4 Whether the Court should (A) approve the sale of the BriteStack Assets free and clear  
5 of all liens, claims, encumbrances and interests pursuant to the Order Appointing Receiver  
6 and RCW 7.60.260, except as provided otherwise in the APA, and (B) authorize Receiver to  
7 cause PPSF to enter into the Agreements and close the transactions contemplated therein.  
8

## 9 **III. LEGAL AUTHORITY AND ARGUMENT**

### 10 **A. The Court Should Approve the Sale of the BriteStack Assets as a Valid Exercise** 11 **of Receiver’s Business Judgment**

12 The receivership statute provides that “[t]he receiver, with the court’s approval after  
13 notice and a hearing, may use, sell or lease estate property other than in the ordinary course  
14 of business.” RCW 7.60.260(1). Further, with limited exceptions in applicable here, the  
15 statute also authorizes the court to approve of the sale “free and clear of liens and of all rights  
16 of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all  
17 claims secured by the property....” RCW 7.60.260(2).  
18

19 Receiver’s decision to sell the BriteStack Assets on the terms of the Agreements has  
20 substantial business justification. Respondents do not have resources available to fully meet  
21 the obligations of the USDA Prime Contract, and a substantial factor in the valuation of the  
22 BriteStack Assets is Respondents’ inability to fully satisfy that contract, indicating that their  
23 value would likely fall as the outstanding obligations under the USDA Prime Contract are  
24 met over time. Rather than allow the value of the BriteStack Assets to deteriorate over time,  
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1 Receiver determined that it is in the best interests of the Receivership Estate to sell them  
2 separately from the Receivership Estate's other assets.

3 **B. The Court Should Authorize Sale Free and Clear of Liens, Claims and**  
4 **Encumbrances, Except as Otherwise Provided in the Agreements.**

5 The Receiver requests that the Court authorize, under RCW 7.60.260, the sale of the  
6 BriteStack Assets free and clear of all liens, claims and encumbrances which may be asserted  
7 against the BriteStack Assets, except as otherwise provided in the Agreements, with any such  
8 liens, claims and encumbrances attaching to the proceeds of the sale.

9  
10 Buyers of assets from insolvent entities commonly require that the assets be sold  
11 "free and clear" of liens, and, subject to the exceptions described in the Agreements, SBS has  
12 required such a provision. Here, the BriteStack Assets can be sold free and clear of liens and  
13 any rights of redemption, whether or not the sale will generate proceeds sufficient to fully  
14 satisfy all claims secured by the BriteStack Assets. RCW 7.60.260(2).

15  
16 **C. The Court Should Authorize Receiver to Enter into and Close the Agreements**

17 The terms of the Agreements are the product of extensive and arms'-length  
18 negotiations between the Receiver and SBS, and the Sale is in the best interests of the  
19 Receivership Estate and its creditors.

20 The Purchase Price and other consideration provided by SBS under the Agreements  
21 represents fair value and the highest and best use for the BriteStack Assets, as determined by  
22 the Receiver exercising its business judgment. Should it ever arise, the Overbid  
23 Reimbursement is a valid and reasonable accommodation to SBS that (1) is limited to the  
24 actual expenses incurred by SBS and (2) is only due if the Agreements are not consummated  
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1 and Receiver ultimately completes a sale of the BriteStack Assets to a third party for higher  
2 and better value.

3 **IV. CONCLUSION**

4 Based on the above facts, evidence, and legal authority, the Receiver requests that  
5 this Court approve the Motion and enter an order granting the relief requested herein.  
6

7 *I hereby certify that this brief contains 2416 words, in accordance with the Local*  
8 *Civil Rules.*

9 DATED this 18<sup>th</sup> day of July, 2024.

10 SCHWABE, WILLIAMSON & WYATT, P.C.

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