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Attorneys for Official Committee of Unsecured
Creditors of Ittella International LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:	)	Case No.: 2:23-bk-14154-SK
ITTELLA INTERNATIONAL LLC, a	)	
California limited liability company;	)	(Jointly administered with Case Nos.
ITTELLA'S CHEF, LLC, a California	)	2:23-bk-14161-WB; 2:23-bk-14159-SK;
limited liability company; TATTOOED	)	2:23-bk-14157-BR; 2:23-bk-14156-NB;
CHEF, INC. a Delaware corporation;	)	2-23-bk-14158-DS; 2:23-bk-14155-NB;
MYJOJO, INC. a Delaware corporation;	)	2:23-bk-14160-BR)
NEW MEXICO FOOD DISTRIBUTORS,	)	
INC., a New Mexico corporation;	)	Chapter 11 Cases
KARSTEN TORTILLA FACTORY, LLC, a	)	
New Mexico limited liability company; BCI	)	VERIFIED COMPLAINT TO
ACQUISITION, INC., a Delaware	)	COLLECT AMOUNTS DUE TO
corporation; TTCF-NM HOLDINGS INC.,	)	DEBTORS
a New Mexico corporation,	)	
	)	
Debtors and	)	
Debtors-in-Possession.	)	
OFFICIAL COMMITTEE OF	)	
UNSECURED CREDITORS OF ITTELLA	)	Adv. Pro. No.: _____
INTERNATIONAL, LLC	)	
Plaintiff,	)	
vs.	)	
WINCO FOODS, LLC, a Delaware limited	)	
liability company	)	
Defendant.	)	

237843531.1
242508-10001

VERIFIED COMPLAINT TO COLLECT AMOUNTS DUE TO DEBTORS

1 Plaintiff, the Official Committee of Unsecured Creditors of Ittella International LLC
2 (“**Ittella**”), by and through its undersigned attorneys (“**Plaintiff**”), complains of defendant
3 Winco Foods, LLC (“**Defendant**”) and for causes of action respectfully shows as follows:

4 **STATEMENT OF THE CASE**

5 1. This is an action for damages as a result of, among other things, Defendant’s
6 improper failure and refusal to pay no less than \$51,864.27, which is due and payable to
7 one of more of the Debtors (defined below), for goods that were delivered to Defendant.

8 **JURISDICTION AND VENUE**

9 2. This court has subject matter jurisdiction over this adversary proceeding,
10 pursuant to 28 U.S.C. §§ 157 and 1334(b) because this adversary proceeding arises under,
11 arises in, and relates to the Chapter 11 cases captioned Ittella International LLC, et al,
12 Chapter 11 Case No. 23-14154 (jointly administered) filed in this Court.

13 3. This adversary proceeding is a “core” proceeding to be heard and
14 determined by the Court pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court
15 pursuant to 28 U.S.C. §§ 1408 and 1409.

16 4. Plaintiff consents to entry of final orders and judgment by the Court.

17 **PARTIES**

18 5. Pursuant to an order of the Court entered on October 20, 2023 (Docket No.
19 502), Plaintiff has been authorized and has standing to commence and prosecute this
20 action on behalf of and in the place and stead of each of Ittella, Ittella’s Chef, LLC,
21 Tattooed Chef, Inc., Myjojo, Inc., New Mexico Food Distributors, Inc., Karsten Tortilla
22 Factory, LLC, BCI Acquisition, Inc., and TTCF-NM Holdings Inc. (collectively, the
23 “**Debtors**”).

24 6. Upon information and belief, Defendant is a Delaware limited liability
25 company, with a place of business at 650 N Armstrong Pl, Boise, ID, 83704. At all
26 relevant times, Defendant was a customer of one or more of the Debtors and purchased
27 goods from one or more of the Debtors.

BACKGROUND FACTS

7. The Debtors sold certain products (the “Products”) to Defendant. At the request of Defendant, the Debtors delivered the Products to Defendant. Contemporaneously with each delivery, the Debtors issued invoices for the products. Each invoice was sent to Defendant (each an “Invoice” and collectively, the “**Invoices**”), seeking payment in the collective amount of \$51,864.27. A true and correct copy of a statement listing each of the Invoices is attached hereto as **Exhibit A** and incorporated herein by reference.

8. Despite receiving and retaining the Products and despite receiving and not objecting to the Invoices, Defendant has failed and refused to make payment to the Debtors.

9. Ittella and Plaintiff have repeatedly demanded that Defendant make payment.

10. Despite numerous demands, Defendant has failed and refused to make payment.

11. By reason of the foregoing, as of November 16, 2023, Plaintiff has been damaged and is entitled to the sum of not less than \$51,864.27 from Defendant.

First Cause Of Action

(Account Stated)

12. Plaintiff repeats, realleges, and incorporates by reference, each and every allegation and averment set forth above with the same force and effect as if the same were more fully set forth at length herein.

13. The Debtors provided the Invoices to Defendant for amounts due.

14. The Invoices were accepted as correct by Defendant and Defendant did not object to the Invoices in a timely manner.

15. Accordingly, the accounts receivable due pursuant to the Invoices constitute an account stated to which Defendant cannot now object.

1 16. As a result of the foregoing, Plaintiff is entitled to immediate payment in the
2 sum of no less than \$51,864.27.

3 **SECOND CAUSE OF ACTION**

4 **(Unjust Enrichment)**

5 17. Plaintiff repeats, realleges, and incorporates by reference, each and every
6 allegation and averment set forth above with the same force and effect as if the same were
7 more fully set forth at length herein.

8 18. Defendant has been enriched by receiving the Products from the Debtors,
9 but not making payment to the Debtors.

10 19. By reason of the foregoing, Defendant has been unjustly enriched at the
11 Debtors' expense.

12 20. Equity and good conscience do not permit Defendant to retain this benefit
13 without the Debtors receiving the Products or anything else in exchange from Defendant.

14 21. By reason of the foregoing, Plaintiff is entitled to immediate payment in the
15 sum of no less than \$51,864.27 from Defendant.

16 **THIRD CAUSE OF ACTION**

17 **(Breach of Duty of Good Faith and Fair Dealing)**

18 22. Plaintiff repeats, realleges, and incorporates by reference, each and every
19 allegation and averment set forth above with the same force and effect as if the same were
20 more fully set forth at length herein.

21 23. In every contract in California there is an implied covenant of good faith
22 and fair dealing.

23 24. The Debtors fully performed their obligations under the invoices.

24 25. Defendant acted in bad faith and breached the covenant of good faith and
25 fair dealing by failing and refusing to make payment to the Debtors, despite repeated
26 demand therefore by the Debtors and Plaintiff.

26. As a result of Defendant's breach, Plaintiff is entitled to immediate payment in the sum of no less than \$51,864.27.

FOURTH CAUSE OF ACTION

(Conversion)

27. Plaintiff repeats, realleges, and incorporates by reference, each and every allegation and averment set forth above with the same force and effect as if the same were more fully set forth at length herein.

28. The Products were delivered to Defendant in exchange for payment to be made to the Debtors.

29. However, payment was never made to the Debtors.

30. As a result, Defendant is no longer entitled to the Products.

31. In derogation of the Debtors' rights, Defendant intentionally exercised dominion and control over the Products.

32. As a result of Defendant's conversion, Plaintiff is entitled to immediate payment in the sum of no less than \$51,864.27.

FIFTH CAUSE OF ACTION

(Breach of Contract)

33. Plaintiff repeats, realleges, and incorporates by reference, each and every allegation and averment set forth above with the same force and effect as if the same were more fully set forth at length herein.

34. The Invoices are valid and enforceable contracts between the Debtors and Defendant.

35. Defendant breached the Invoices by refusing to make payment to the Debtors.

36. The Debtors and Plaintiff have repeatedly demanded that Defendant make payment, but Defendant has failed and refused to make payment.

37. The Debtors have fully and properly performed all of the terms, conditions, and covenants required to be performed under the terms of the Invoices and otherwise.

38. By reason of Defendant's breach, Plaintiff is entitled to immediate payment in the sum of no less than \$51,864.27.

WHEREFORE, Plaintiff demands:

1. On its first cause of action for account stated, judgment in favor of Plaintiff and against Defendant as of November 16, 2023 in the amount of no less than \$51,864.27;

2. On its second cause of action for unjust enrichment, judgment in favor of Plaintiff and against Defendant as of November 16, 2023 in the amount of no less than \$51,864.27;

3. On its third cause of action for breach of the duty of good faith and fair dealing, judgment in favor of Plaintiff and against Defendant as of November 16, 2023 in the amount of no less than \$51,864.27;

4. On its fourth cause of action for conversion, judgment in favor of Plaintiff and against Defendant as of November 16, 2023 in the amount of no less than \$51,864.27;

5. On its fifth cause of action for breach of contract, judgment in favor of Plaintiff and against Defendant as of November 16, 2023 in the amount of no less than \$51,864.27;

6. An award of attorneys' fees and costs; and

7. For such other relief as this Court deems just and equitable.

Dated: November 17, 2023

LOEB & LOEB LLP
BERNARD R. GIVEN II
SCHUYLER G. CARROLL
DANIEL B. BESIKOF

By: /s/ Bernard R. Given, II
Bernard R. Given II
Attorneys for OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF
ITTELLA INTERNATIONAL LLC

VERIFICATION

I, Alexander Henderson chairman of the Official Committee of Unsecured Creditors of Ittella International LLC, hereby certify that I am an authorized representative of the Official Committee of Unsecured Creditors of Ittella International LLC the Plaintiff in the foregoing matter. As such, I am authorized to make this Verification on its behalf. I verify that I have read the foregoing pleadings and that the averments of fact contained therein are true and correct to the best of my knowledge, information and belief. I further certify that I have personal knowledge of the facts in the foregoing pleading.

I acknowledge and understand that the statements herein contained are subject to the penalties of 18 U.S.C. § 152 relating to the unsworn falsification to authorities.

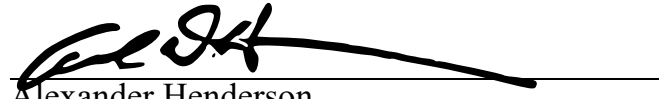

Alexander Henderson

Exhibit A

6305 Alondra Blvd
Paramount CA 90723
United States of America

Statement

WINCO FOODS LLC

Customer #: CWINCOF
Statement Date: 11/08/2023
Cutoff Date: 11/8/2023

Sold To

WINCO FOODS LLC

Warehouse A/P P.O. Box 52
Boise, ID 837070052
UNITED STATES OF AMERICA

Remit To

Document	Document Date	Due Date	Type	Reference	Original Amount	Open Amount	Running Total
22011149	12/27/2022	01/26/2023	CSINV	PO: 163502000	38,929.80	7,057.60	7,057.60
22011151	12/27/2022	01/26/2023	CSINV	PO: 708480400	18,135.00	3,287.70	10,345.30
22011247	12/27/2022	01/26/2023	CSINV	PO: 221355300	4,315.20	782.30	11,127.60
23001111	01/19/2023	02/18/2023	CSINV	PO: 164037200	42,289.20	10,905.01	22,032.61
23001193	01/20/2023	02/19/2023	CSINV	PO: 509427101	1,632.00	413.76	22,446.37
23001194	01/20/2023	02/19/2023	CSINV	PO: 510391200	27,540.00	6,982.20	29,428.57
23001195	01/20/2023	02/19/2023	CSINV	PO: 510391200	5,569.20	1,411.96	30,840.53
23001743	01/27/2023	02/26/2023	CSINV	PO: 410779000	16,702.80	3,028.06	33,868.59
23004304	03/15/2023	04/14/2023	CSINV	PO: 511055800	13,503.60	1,965.31	35,833.90
23004308	03/15/2023	04/14/2023	CSINV	PO: 164037201	4,519.80	819.40	36,653.30
23004571	03/22/2023	04/21/2023	CSINV	PO: 410779001	3,906.00	708.12	37,361.42
23004701	03/23/2023	04/22/2023	CSINV	PO: 709344800	14,382.00	3,197.94	40,559.36
23005279	04/03/2023	05/03/2023	CSINV	PO: 165340100	22,256.40	4,738.09	45,297.45
23005281	04/03/2023	05/03/2023	CSINV	PO: 511055801	7,344.00	1,630.56	46,928.01
23005285	04/03/2023	05/03/2023	CSINV	PO: 709344801	7,650.00	1,579.50	48,507.51
23005770	04/13/2023	05/13/2023	CSINV	PO: 411828800	15,912.00	3,356.76	51,864.27

0 - 30 DAYS	30 - 60 DAYS	60 - 90 DAYS	90 - 120 DAYS	OVER 120 DAYS	TOTAL
0.00	0.00	0.00	0.00	51,864.27	0.00

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Official Committee of Unsecured Creditors of Ittella International LLC		DEFENDANTS Winco Foods, LLC
ATTORNEYS (Firm Name, Address, and Telephone No.) Loeb & Loeb LLP 10100 Santa Monica Blvd., Suite 2200 Los Angeles, CA 90067 Tel: 310-282-2000		ATTORNEYS (If Known)
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☒ Other ☐ Trustee		PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☒ Creditor ☐ Other ☐ Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Account Stated etc to collect amounts due to debtor		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 70 01(1) – Recovery of Money/Property ☐ 11-Recovery of money/property - §542 turnover of property ☐ 12-Recovery of money/property - §547 preference ☐ 13-Recovery of money/property - §548 fraudulent transfer ☐ 14-Recovery of money/property - other FRBP 70 01 (2) – Validity, Priority or Extent of Lien ☐ 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/ Revocation of Discharge ☐ 41-Objection/revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation ☐ 51-Revocation of confirmation FRBP 7001(6) – Dischargeability ☐ 66 -Dischargeability - §523(a)(1),(14),(14A) priority tax claims ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny FRBP 70 01(6) – Dischargeability (continued) ☐ 61 -Dischargeability- §523(a)(5), domestic support ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury ☐ 63-Dischargeability - §523(a)(8), student loan ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) ☐ 65 -Dischargeability - other FRBP 70 01(7) – Injunctive Relief ☐ 71 -Injunctive relief- imposition of stay ☐ 72-Injunctive relief - other FRBP 70 01(8) Subordination of Claim or Interest ☐ 81 -Subordination of claim or interest FRBP 70 01(9) Declaratory Judgment ☐ 91 -Declaratory judgment FRBP 70 01(10) Determination of Removed Action ☐ 01 -Determination of removed claim or cause Other ☐ SS-SIPA Case - 15 U.S.C. §§78aaa <i>et seq.</i> ☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)		
☐ Check if this case involves a substantive issue of state law		☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint		☒ Demand \$ 51,864.27
Other Relief Sought		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Ittella International LLC, et al.		BANKRUPTCY CASE NO. 2:23-bk-14154-SK (Jointly administered with Case Nos. 2:23-bk-14161-WB; 2:23-bk-14159-SK; 2:23-bk-14157-BR; 2:23-bk-14156-NB; 2:23-bk-14158-DS; 2:23-bk-14155-NB; 2:23-bk-14160-BR)
DISTRICT IN WHICH CASE IS PENDING Central District California	DIVISION OFFICE	NAME OF JUDGE Hon. Sandra R. Klein
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 11/17/2023		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Bernard R. Given, II

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.