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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**DECLARATION OF ALAN BOYKO, CHIEF TRANSFORMATION OFFICER OF THE
DEBTOR, IN SUPPORT OF DEBTOR'S CHAPTER 11 PETITION AND FIRST DAY
MOTIONS**

I, Alan Boyko, do hereby declare, under penalty of perjury, that:

1. I am a Senior Managing Director in the Corporate Finance and Restructuring Group at FTI Consulting, Inc. (“FTI”), which has a principal place of business at 999 17th Street #700, Denver, Colorado 80202. Since August 2023, FTI has been engaged as a restructuring and financial advisor to Vobev, LLC (“Vobev”) and its affiliated Debtor and Debtor in possession in the above-captioned case (collectively, the “Debtor” or the “Company”). I began serving as Co-Chief Transformation Officer on November 15, 2023, and was appointed as the Debtor’s sole Chief Transformation Officer (“CTO”) on June 3, 2024.

2. I have been a full-time restructuring advisor for over 18 years. I received a B.S. in Finance in 2001 from Slippery Rock University and an M.B.A. in 2006 from the University of Notre Dame. I am a Certified Insolvency and Restructuring Advisor and a Certified Turnaround Professional. I have been employed by FTI since 2006, and have been in my current position since 2017.

3. I am generally familiar with the Debtor’s day-to-day operations, business, financial affairs, and books and records. I submit this declaration (this “Declaration”) to set forth the facts and circumstances that resulted in the commencement of this chapter 11 case, and in support of (a) the Debtor’s petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) filed on the date hereof (the “Petition Date”) and (b) the relief that the Debtor has requested from the Court pursuant to the motions and applications described herein (collectively, the “First Day Motions”).

4. Following FTI’s retention and my appointment as CTO, I have overseen a team of FTI professionals who have been helping the Debtor with respect to cash forecasting, business plan development and modeling, supporting capital raising efforts, sizing of the potential DIP

financing need, the compilation of data and diligence necessary to draft the First Day Motions, and otherwise prepare for this chapter 11 case.

5. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents and information concerning the Debtor's operations, financial affairs, and restructuring initiatives, information provided to me by the Debtor's management team and advisors, including the FTI team working under my supervision, or my opinion based upon experience and knowledge. I am authorized to submit this declaration on behalf of each Debtor, and if called upon to testify, I would testify competently to the facts set forth herein.

6. To familiarize the Court with the Debtor and the relief that the Debtor seeks upon the commencement of its Chapter 11 case, this Declaration is organized into four parts. Part I provides an introduction to the Debtor and its business operations. Part II describes the Debtor's prepetition capital structure. Part III describes the events that led to the commencement of the Chapter 11 case and the Debtor's prepetition restructuring efforts. Part IV highlights certain key facts supporting the relief sought in the First Day Motions and incorporates by reference all facts set forth therein.

I. Introduction

7. Based in Salt Lake City, Utah, the Company is an innovator in the beverage industry, offering integrated beverage can production, filling and warehousing capacity at a single location, the first of its kind. The Company's state-of-the art custom production and filling facility came online in 2022, and now produces and fills tens of millions of aluminum beverage cans per year for some of the most well-known beverage companies in the world. The Company also provides beverage formulation and mixing services. The Company's integration of can

production, beverage formulation and can filling services eliminates customers' need to transport cans between production and filling sites, reducing freight costs. In addition, the Company operates two onsite warehouses for finished goods, cans and raw materials to provide warehousing logistics services for its customers.

8. In 2020, the Company began construction of its Salt Lake City facility. Construction continued through the COVID-19 pandemic years but was hampered by the pandemic's effects on the global supply chain. For the Company, these effects included delays in procuring equipment for the Salt Lake City facility, resulting in cost overruns and delays in the Company's ability to ramp up production capabilities. These overruns and delays, in turn, drained the Company's initial liquidity.

9. By late 2023, the Company's Salt Lake City facility was fully operational. The facility includes a purpose-built production facility of approximately 850,000 square feet with two high-speed can making lines capable of producing up to 1.8 billion cans annually, two high-speed fill lines, and other filling and packing lines capable of filling up to 900 million cans annually. The facility also includes a finished goods warehouse of approximately 300,000 square feet and additional warehouse space for cans and raw materials of approximately 250,000 square feet.

10. The Debtor filed this chapter 11 case in order to effectuate a sale of substantially all of its assets to maximize value for all stakeholders. The Debtor began marketing its assets, in addition to soliciting offers for alternative financing, prior to the filing of this Chapter 11 case. The prepetition marketing process generated an actionable offer for the purchase of the Company's assets, subject to a bidding process to ensure that the Debtor receives the highest or otherwise best offer for those assets. With the assistance of its advisors, the Debtor is actively working to finalize

an asset purchase agreement for the proposed transaction and anticipates filing a motion to approve the bidding process shortly.

11. To ensure a smooth transition into chapter 11 and limit the operational disruption of this chapter 11 case, the Debtor filed the First Day Motions. For the reasons described below, the relief sought in each of the First Day Motions, including the approval of the proposed DIP Facility (as defined below), is in the best interests of the Debtor's estate, its creditors, and all other parties in interest.

12. Any restriction on the Debtor's ability to operate in the ordinary course could have materially adverse ramifications for the Debtor's business and interfere with the Debtor's ability to maximize value for its creditors. The relief requested in the First Day Motions is narrowly tailored to avoid any such disruptions and is consistent with "first day" relief in other cases in which I have been involved.

II. Prepetition Capital Structure

13. As of the Petition Date, the Debtor's books and records reflect a total indebtedness of approximately \$476 million, consisting of approximately \$402,018,730.06 in funded principal debt obligations and approximately \$74 million in unsecured debt.

14. The Debtor's secured debt obligations arise under that certain Credit and Guaranty Agreement, dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement"), and collectively with all other agreements, instruments and documents executed or delivered in connection therewith or otherwise evidencing or securing any Prepetition Term Loan Obligations (as defined below) and any Prepetition ABL Obligations (as defined below), each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Loan Documents"), by

and among (a) non-debtor Vobev Holdings LLC (“Parent”), (b) Vobev, as borrower, (c) certain subsidiaries of Parent from time to time party thereto as guarantors, (d) Ares Capital Corporation, as administrative agent (in such capacity, together with any successor thereto, the “Prepetition Administrative Agent”), (e) ACF Finco I LP, as revolving agent and collateral agent (in such capacities, together with any successors thereto, the “Prepetition Revolving Agent” and “Prepetition Collateral Agent”, respectively; the Prepetition Administrative Agent, the Prepetition Revolving Agent, and the Prepetition Collateral Agent, collectively, the “Prepetition Agents”), and (f) certain lenders party thereto from time to time who have made Prepetition Term Loans (as defined below) (the “Prepetition Term Loan Lenders,” and together with the Prepetition Administrative Agent, collectively, the “Prepetition Term Loan Parties”).

15. As of the Petition Date, the Debtor was indebted and liable to the Prepetition Term Loan Parties on account of senior secured term loans provided to Vobev (the “Prepetition Term Loan Facility”) in an aggregate principal amount outstanding under the Prepetition Term Loan Facility of not less than \$361,141,252.14 consisting of (a) initial term loans in an aggregate principal amount of \$197,666,427.70 (the “Prepetition Initial Term Loans”) and (b) \$163,474,824.44 of delayed draw term loans (the “Prepetition Delayed Draw Term Loans” and, together with the Prepetition Initial Term Loans, the “Prepetition Term Loans”, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor’s obligations in

connection with the Prepetition Term Loan Facility pursuant to the Prepetition Loan Documents, collectively, the “Prepetition Term Loan Obligations”).

16. Pursuant to the Prepetition Credit Agreement, certain lenders party thereto from time to time (the “Prepetition ABL Lenders” and, together with the Prepetition Revolving Agent and Prepetition Collateral Agent, collectively, the “Prepetition ABL Parties” and, together with the Prepetition Term Loan Parties, collectively, the “Prepetition Secured Parties”) provided a secured, superpriority asset-based revolving credit facility to the Borrower (the “Prepetition ABL Facility”, and together with the Prepetition Term Loan Facility, the “Prepetition Facilities”).

17. As of the Petition Date, the Debtor was indebted and liable to the Prepetition ABL Parties in an aggregate amount outstanding under the Prepetition ABL Facility of not less than \$40,877,477.92 (including accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of the Debtor’s obligations in connection with the Prepetition ABL Facility pursuant to the Prepetition Loan Documents, the “Prepetition ABL Obligations”, and together with the Prepetition Term Loan Obligations, the “Prepetition Obligations”). For the avoidance of doubt, as of the Petition Date, the Revolving Credit Commitments (as defined in the Prepetition Credit Agreement) have been terminated.

18. As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, to secure the Prepetition Obligations, the Debtor granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties and as security for the Prepetition Obligations

(the “Prepetition Liens”) a first priority security interest in and continuing lien on all of the Debtor’s right, title and interest in substantially all of its assets (the “Prepetition Collateral”).¹

III. Events Leading to Chapter 11 and Prepetition Restructuring Efforts

19. As previously noted, pandemic-related supply chain problems delayed the Debtor’s Salt Lake City facility from reaching full operational capacity, leading to cost overruns and the eventual exhaustion of the Debtor’s initial funding. In April of 2023, the Debtor was able to refinance its existing debt, resulting in the Prepetition Facilities, which together provided much-needed additional capital for completion of the Salt Lake City facility buildout and working capital. By October 2023, however, that additional funding had been used, the Debtor’s production remained insufficient, and the Debtor required additional funding.

20. In November 2023, the Prepetition Lenders agreed to provide an additional \$40 million in term loans. As required by the terms of that transaction, the Debtor hired an investment banking firm, commenced a process to raise additional capital, added an independent member, Mr. Alan Carr, to its board (he later became Vobev’s sole member manager), and engaged FTI to assist the company with liquidity management and operational improvements. I joined the Debtor as Co-CTO at that time.

21. The initial process run by the investment banking firm, which took place in the fourth quarter of 2023 and the first quarter of 2024, was thorough, and involved solicitations of interest from over 50 parties. Unfortunately, however, the initial capital raising effort proved unsuccessful.

22. Since that time, the Debtor’s needs for additional working capital has been substantial. Ultimately, the Debtor hired Houlihan Lokey to commence a process in June 2024 to

¹ The foregoing is an overview of the Debtor’s prepetition secured debt obligations. Greater detail concerning the Debtor’s prepetition secured debt obligations is set forth in the DIP Motion (as defined below).

raise additional capital or sell the Debtor's assets. Throughout the past year, the Prepetition Lenders have continued to provide additional financial support and liquidity critical to maintain ongoing operations of the Debtor through additional term loans totaling approximately \$94 million.

23. The process run by Houlihan Lokey has been significant and wide-reaching, involving solicitations of interest from 162 parties, and has resulted in 54 parties agreeing to nondisclosure agreements and several indications of interest in a potential sale transaction. As noted above, the Debtor is actively working to finalize a potential stalking horse bid and intends to move forward to seek approval of bidding procedures and a stalking horse asset purchase agreement promptly. The Debtor intends to utilize the Chapter 11 process to continue its prepetition sale and marketing process and to effectuate a sale of substantially all of its assets to maximize value for all stakeholders.

III. Relief Sought in the Debtor's First Day Motions²

24. I understand that the Bankruptcy Rules permit the Court to grant relief within the first twenty-one (21) days after the Petition Date where such relief is necessary to avoid immediate and irreparable harm. The relief in the First Day Motions is necessary and is in the best interests of the Debtor, its creditors, and all other parties in interest. I believe that an immediate and orderly transition into chapter 11 is critical to the viability of the Debtor's operations and that any delay in granting the relief described below could hinder the Debtor's operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of this chapter 11 case would severely disrupt the Debtor's operations at this important juncture.

² Capitalized terms used but not defined in this section have the meanings assigned to such terms in the applicable First Day Motions.

A description of the relief requested in and the facts supporting each of the First Day Motions is set forth below.

A. Administrative Motions

- i. Debtor's Application for Appointment of Kroll Restructuring Administration LLC as Claims and Noticing Agent Effective as of the Petition Date (the "Claims Agent Application").

25. In the Claims Agent Application, the Debtor seeks entry of an order appointing Kroll Restructuring Administration LLC ("Kroll") as the Claims and Noticing Agent for the Debtor and its chapter 11 case, effective as of the Petition Date, assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtor's chapter 11 case.

26. The Debtor's selection of Kroll to act as the Claims and Noticing Agent was diligence and comprehensive, in that the Debtor has obtained and reviewed engagement proposals from at least three (3) court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtor submits, based on all engagement proposals obtained and reviewed, that Kroll's rates are competitive and reasonable given Kroll's quality of services and expertise.

- ii. Debtor's Motion for Entry of Order (I) Authorizing Redaction of Certain Personal Information, and (II) Granting Related Relief (the "Creditor Matrix Motion").

27. In the Creditor Matrix Motion, the Debtor seeks entry of an order directing the Debtor to provide a list of the Debtor's thirty (30) largest unsecured creditors in lieu of submitting a separate list of each creditor. Further, the Debtor seeks entry of an order allowing the Debtor to redact certain personal identification information and granting related relief.

28. I believe filing a list of the Debtor's thirty (30) largest unsecured creditors is warranted. Requiring the Debtor to segregate and convert its computerized records to a

Debtor-specific creditor matrix format would be an unnecessarily burdensome task and result in duplicate mailings. Given the large volume of creditors and other parties in interest in this Chapter 11 case, converting the Debtor's computerized information to a format compatible with the matrix requirements could also increase the risk of error with respect to the information already on computerized systems.

29. One of the primary purposes of filing a list of a debtor's largest unsecured creditors is to facilitate the U.S. Trustee's evaluation of the types and amounts of unsecured claims asserted against a debtor so that the U.S. Trustee can make an informed decision when identifying potential candidates to serve on an official committee of unsecured creditors. *See In re Dandy Doughboy Donuts, Inc.*, 66 B.R. 457, 458 (Bankr. S.D. Fla. 1986) ("The purpose of the separate list of 20 largest creditors required by [Bankruptcy Rule 1007(d)] is to enable the clerk to identify members and the court to appoint immediately an unsecured creditors' committee in compliance with 11 U.S.C. 1102(a)(1)."). Because the Debtor's significant unsecured creditors are captured on the Consolidated Top 30 Creditors List, it will provide the U.S. Trustee with a sufficiently clear picture of the Debtor's unsecured creditor constituency.

30. In addition, the Debtor respectfully submits that it is appropriate to authorize the Debtor to redact from any paper filed or to be filed with the Court in the Chapter 11 Case the email addresses and home addresses of any of the Debtor's individual creditors and equity security holders, to the extent applicable, to ensure the Debtor is not exposed to potential civil liability and significant financial penalties.

31. Privacy protection regulations have been enacted in jurisdictions in which the Debtor does business. For instance, in 2018, the state of California enacted the California Consumer Privacy Act of 2018 (the "CCPA"), which provides individuals domiciled in California

the right to, among other things, request their collected personal information, including postal addresses, be deleted by entities subject to the regulation. Violators risk injunctions and civil penalties of up to \$2,500 for *each* violation and up to \$7,500 for *each intentional* violation. Cal. Civ. Code § 1798.155.

32. In addition, disclosing such information could be used by third parties to, among other things, perpetrate identity theft or locate survivors of domestic violence or stalking who have otherwise taken steps to conceal their whereabouts. This risk is not merely speculative. In at least one chapter 11 case, the abusive former partner of a debtor's employee exploited the publicly accessible creditor and employee information filed in the chapter 11 case to track the employee to her new address, which had not been publicly available until then, forcing the employee to change addresses again for her safety.

33. The Debtor has proposed to provide an unredacted version of the Consolidated Creditor Matrix and Consolidated Top 30 Creditors List and any other redacted, applicable filings to this Court, the U.S. Trustee, counsel to the DIP Agent and DIP Lenders, counsel to any statutory committee appointed in the Chapter 11 case, and other parties in interest upon reasonable request (email being sufficient) to the Debtor or this Court that is reasonably related to this Chapter 11 case.

B. Financial Motions

- i. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; (VI) Scheduling a Final Hearing; and (VII) Granting Related Relief (the "DIP Motion").

34. Pursuant to the DIP Motion, the Debtor seeks authority to obtain a consensual priming, senior secured superpriority debtor-in-possession term loan credit facility in the aggregate

principal amount of \$115,377,477.92, consisting of (a) a multiple draw new money term loan (the “New Money DIP Loan”) in the amount of \$37,250,000, of which (x) \$14,000,000 would be made available upon entry of the Interim Order (the “Interim Amount”), and (y) an additional \$23,250,000 would be made available upon entry of the Final Order, and (b) upon entry of the Final Order, a “roll up” on a dollar-for-dollar basis of (x) Prepetition Revolving Loans (the “ABL Roll-Up Loans”) in the amount of \$40,877,477.92 plus (y) \$37,250,000 of Prepetition Term Loans (the “Term Loan Roll-Up Loans”). The Interim Amount will be available immediately upon entry of the Interim Order, subject to the terms of the DIP Term Sheet.

- a. The Debtor Has an Immediate and Continuing Need for DIP Financing and Access to Cash Collateral.

35. The Debtor commenced this Chapter 11 case with limited cash on hand and is in need of both access to Cash Collateral and an immediate infusion of liquidity to ensure sufficient working capital to operate its business, pay its employees and vendors, service its customers, administer its estate during this Chapter 11 case, and fund the sale process. The Debtor has had significant liquidity issues for several months, and approval of the Interim Amount and the DIP Facility is necessary to prevent immediate and irreparable harm to the Debtor and its reorganization efforts and to ensure a smooth transition into Chapter 11.

36. Without prompt access to postpetition financing and Cash Collateral, the Debtor would be unable to: (a) ensure payments to employees, third-party vendors, utilities, taxing authorities, and insurance companies, among others, who provide the essential services needed to operate, maintain, and insure the Debtor’s assets; (b) ensure the payment of administrative expenses; (c) provide a positive message to the market that the Debtor will continue to conduct “business as usual” during this Chapter 11 case and that the sale process will be adequate, which is critical to ensure confidence in the Debtor from, among others, its customers, employees and

vendors; and (d) to make any necessary payments to preserve the value of the Debtor's business. Immediate access to the DIP Facility and continued access to the Cash Collateral is, therefore, crucial to the Debtor's efforts to preserve value for its stakeholders during this Chapter 11 case and to avoid immediate and irreparable harm to the value of the Debtor's estate. Absent this funding, the Debtor would not be able to operate its business, let alone at the levels that are necessary to preserve its goodwill, employee morale, vendor confidence in the Debtor's business, and customer loyalty and reputation in the market. I further believe that the Debtor's entry into the DIP Term Sheet is an exercise of the Debtor's sound business judgment, and that accessing the DIP Facility and further use of Cash Collateral is necessary to prevent immediate and irreparable harm to the Debtor.

b. Adequacy of DIP

37. FTI assisted the Debtor, its management, and other advisors in reviewing and refining projected cash forecasts for the Debtor's business during this Chapter 11 case. These forecasts take into account anticipated cash receipts and disbursements during the projected period and consider a number of factors, including, but not limited to, the effect of the Chapter 11 filing on the operations of the business, fees and interest expenses associated with the postpetition financing, professional fees, and customer and vendor obligations, as well as the operating performance of the business.

38. FTI undertook a detailed analysis of the Debtor's operations and funding needs, and from this review and analysis of projected cash forecasts for the Debtor's business during this Chapter 11 case, it became clear that the Debtor would require an infusion of capital to operate during this Chapter 11 case as it conducts its marketing for the sale process.

39. As of the Petition Date, substantially all of the Debtor's cash is encumbered, which means that the Debtor requires immediate access to Cash Collateral to operate its business and continue paying its debts as they come due. Prior to the Petition Date, the Debtor, in consultation with FTI and its other advisors, reviewed and analyzed its projected cash needs and prepared a cash budget outlining the Debtor's postpetition needs (as may be amended, modified, or supplemented from time to time, the "Approved Budget") outlining the funding that would be critical in the initial nine (9) weeks post-filing, with such budget to be updated pursuant to the terms of the DIP Orders.

40. Based on information available as of the Petition Date, it is my belief that the Approved Budget, as will be updated pursuant to the terms of the DIP Orders, presents a reasonable estimate of the Debtor's cash sources and needs during the projection period to maintain business operations and to prevent immediate and irreparable harm to the Debtor's estate.

c. The DIP Facility Was Negotiated in Good Faith and at Arms' Length

41. The Debtor's management and advisors were actively involved throughout the negotiations with the DIP Lenders for debtor in possession financing, which were conducted at arm's length and in good faith. Following such negotiations, the Debtor reached an agreement with the DIP Lenders with respect to the terms of the DIP Facility. The Debtor and its advisors worked to negotiate the most favorable terms of the DIP Facility available to the Debtor, given the Debtor's lack of alternative third-party financing. Ultimately, the DIP Lenders were unwilling to lend on terms other than those specifically set forth in the DIP Term Sheet.

42. Without immediate access to the DIP Facility and the use of Cash Collateral, I believe the Debtor would suffer immediate and irreparable harm and would not be able to consummate a going-concern transaction for the benefit of the Debtor's stakeholders and

administer this Chapter 11 case. I believe that the DIP Facility should be approved, and the Debtor be authorized to pay the Applicable Rate and the DIP Fees under the DIP Facility given the Debtor's financial circumstances and the lack of any other viable financing alternatives. I also believe that the use of Cash Collateral alone would be insufficient to meet the Debtor's postpetition liquidity needs.

43. Based on my discussions with the Debtor's management team and its advisors and my review of the terms of the DIP Facility, I believe that the DIP Facility is the best financing option presently available to the Debtor and that the terms of the DIP Facility are reasonable under the circumstances. Accordingly, I believe that the Court's entry of the Interim Order is necessary to preserve the going concern value of the Debtor's operating businesses, pursue the sale of substantially all of the Debtor's assets, and ultimately effectuate a value-maximizing transaction in the best interest of its estate and stakeholders.

- ii. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Continue to Operate Its Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue Certain Intercompany Transactions and (II) Granting Related Relief (the "Cash Management Motion").

44. In the Cash Management Motion, the Debtor seeks the authorization to continue to operate its Cash Management System and maintain its bank accounts, pay any prepetition or postpetition amounts outstanding on account of the bank fees, maintain existing business forms, and related relief.

45. The Debtor operates Bank Accounts (as defined herein) to facilitate the collection and disbursement of funds across the Debtor. The Cash Management System establishes a simplified and efficient means for the Debtor to engage in transactions and transfers required to facilitate its collections and disbursements. Further, the Cash Management System enables

monitoring of collection and disbursement activity and facilitates the Debtor's reporting through the development of timely and accurate information. The Debtor maintains oversight of the Cash Management System and implements cash management controls for receiving, processing, and releasing funds. Additionally, the Debtor regularly reconciles the Debtor's books and records to ensure that they properly account for all transfers.

46. In addition, to maintain the integrity of its Cash Management System, the Debtor requests authority to pay all Bank Fees. The Debtor incurs approximately \$3,000 in Account Maintenance Bank Fees each month under the Cash Management System. The Debtor also incurs quarterly fees to BMO in connection with certain cash-backed standby letters of credit provided by BMO in favor of the Debtor's landlord, as required under the terms of the Debtor's lease agreement (the "LC Bank Fees" and, together with the Account Maintenance Bank Fees, the "Bank Fees"). The LC Bank Fees total approximately \$67,000 each calendar quarter and are debited by BMO directly from the BMO Account at the end of each quarter. The Debtor estimates that approximately \$60,000 in LC Bank Fees have accrued as of the Petition Date.

47. The Debtor uses various pre-printed Business Forms, such as checks, invoices, and letterhead, in the ordinary course of business. Because the Business Forms were used prepetition, they do not reference the Debtor's current status as Debtor in possession. Nonetheless, most parties doing business with the Debtor will be aware of the Debtor's status as Debtor in possession as a result of the publicity surrounding this Chapter 11 case and the notice of commencement served on parties in interest.

48. Requiring the Debtor to change existing Business Forms would unnecessarily distract the Debtor from its restructuring efforts and impose needless expenses on the estate. Thus, the Debtor requests that it be authorized to use its existing Business Forms without placing a

“Debtor in Possession” legend on each, until its existing stock is depleted. Once the Debtor has exhausted its existing stock of checks or forms, any new check stock or subsequently printed checks or forms will bear the designation “Debtor in Possession” with the joint case number. To the extent that checks or forms are prepared electronically, the Debtor will add a “Debtor in Possession” designation to such checks within fourteen (14) days of the Petition Date.

49. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtor’s estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11.

C. Operational Motions

- i. Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to Pay Certain Prepetition Claims of Critical Vendors, Section 503(b)(9) Claimants, and Lien Claimants, and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests, and (III) Granting Related Relief (the “Critical Vendor Motion”).

50. In the Critical Vendor Motion, the Debtor seeks interim and final orders authorizing the Debtor to pay certain prepetition amounts owing on account of Critical Vendor Claims and Section 503(b)(9) Claims (as defined in the Motion) and authorizing the Debtor’s banks and other financial institutions to honor and process check and electronic transfer requests.

51. The Debtor’s core operations (the high-volume production and filling of beverage cans) require the services of a variety of carefully sourced third-party vendors. Should the Debtor become unable to conduct business with a particular vendor, the direct result could be a significant delay or even a shutdown of the Debtor’s production lines, which would drastically harm the Debtor’s relationships with its customers.

52. The Debtor’s operations depend upon the uninterrupted flow of raw materials used in the production of beverage cans and high-quality ingredients for use in crafting the beverages

that fill such cans, including ingredients that are mandated by the Debtor's customers. Maintaining the Debtor's supply chain without disruption is critical to the Debtor's ability to generate revenue. In addition, the Debtor is heavily dependent upon the support and maintenance services needed to keep the Debtor's production lines moving.

53. The Debtor believes there is a significant and material risk that key vendors may stop providing services to the Debtor on a timely basis or completely sever their business relationship with the Debtor. Short of severing their relations with the Debtor, nonpayment of certain Critical Vendor Claims (defined below) may also cause key vendors to take other harmful actions, including refusing to supply goods or services, which could harm the operations of the Debtor and its customers. Providing uninterrupted services for the Debtor's customers is critical to the Debtor's businesses and cash flows, and the Debtor can ill afford any delays or interruptions of this nature.

54. I believe that any material interruption in the provision of the materials, parts and services required by the Debtor's operations, however brief, including the delivery of key commodities and essential services, could cause irreparable harm to the Debtor's go-forward businesses, goodwill, employees, customer base, and market share. If the Debtor is unable to acquire required materials or parts to fulfill customer orders, the Debtor's revenues and customer relationships could suffer irreparable damage. Such harm would likely far outweigh the cost of payment of prepetition claims of critical vendors (collectively, the "Critical Vendor Claims").³ Furthermore, the loss of trade terms (whether on account of demands for cash-in-advance, cash-on-delivery, or otherwise) would negatively impact the Debtor's liquidity. It is thus essential

³ Notwithstanding the relief requested herein, the Debtor reserves all its rights and remedies under the Bankruptcy Code and other applicable laws to pursue any cause of action against any Critical Vendor on account of, among other things, any violation of the automatic stay pursuant to section 362(a)(6) of the Bankruptcy Code.

to the Debtor's restructuring efforts to pay certain Critical Vendors Claims to maintain the Debtor's business operations. The Debtor intends to pay prepetition Critical Vendor Claims only when, in its business judgment, the benefits to its estate from making such payments will exceed the costs to its estate.

55. As explained in the Critical Vendor Motion, the Debtor's Critical Vendors generally fall into two categories: Materials Vendors (who supply the Debtor with essential raw materials needed for the Debtor's production of cans, the ingredients for the beverages that fill the cans, and packaging), and the Parts and Support Vendors (who provide the Debtor with the necessary parts, equipment and services to keep the Debtor's production lines operating).

56. As of the Petition Date, the Debtor estimates that approximately \$8,500,000 is due and outstanding to Materials Suppliers and the Parts and Support Vendors. The Debtor seeks authority in the Critical Vendor Motion to pay up to \$6,600,000 on an interim basis and \$8,500,000 on a final basis on account of Critical Vendor Claims.

- ii. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Pay Prepetition Wages, Employee Benefits Obligations, and Other Compensation, and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations and (II) Granting Related Relief (the "Employee Wages Motion").

57. In the Employee Wages Motion, the Debtor seeks interim and final orders authorizing the Debtor to pay its prepetition employee wages and benefits, and to continue its employee benefits and programs, each in the ordinary course of business.

58. The Debtor believes that, as of the Petition Date, there are amounts accrued under or related to the Compensation and Benefits Programs, which the Debtor estimates to be approximately \$2,736,600. The Debtor expects that all of this amount will become due and payable during the Interim Period. The Debtor believes that all of the Compensation and Benefits

Programs are vital to the Debtor's businesses. As a result, the Debtor requests authority to make payments on account of the Prepetition Compensation Obligations because such payments are necessary to prevent immediate and irreparable harm to the Debtor's businesses. The Debtor believes that the amounts sought to be paid pursuant to this Motion are not in excess of the statutory caps set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

59. As of the Petition Date, the Debtor employs approximately 415 Employees, all of which are full-time. Of the Debtor's Employees, approximately 91 are salaried Employees and approximately 324 Employees are paid on an hourly basis.

60. To supplement its workforce, the Debtor directly employs Independent Contractors who perform certain consulting services for the Debtor. In addition, the Debtor utilizes several contract staffing agencies to hire additional Temporary Workers to support the Debtor for various projects and bespoke needs. All of the Contract Workers' services are important supplements to the efforts of the Debtor's Employees.

61. The Employees and Contract Workers perform a wide variety of functions, which are mission-critical to the preservation of value and the administration of the Debtor's estate. In many instances, the Employees and Contract Workers include personnel who are intimately familiar with the Debtor's businesses, processes, and systems, who have developed relationships with the Debtor's customers, suppliers, and other key counterparties that are essential to the Debtor's businesses, and who cannot be easily replaced. Without the continued, uninterrupted services of the Employees and Contract Workers, the Debtor's business operations will be halted immediately, and the administration of the estate will be materially impaired.

62. The Employees and Contract Workers rely on their compensation and benefits discussed in the Employee Wages Motion to pay their daily living expenses. Not only will these

workers be irreparably harmed if the Debtor is not permitted to continue paying compensation, including the Prepetition Compensation Obligations, and providing health and other benefits during this Chapter 11 case, but any interruption in payment will also likely jeopardize their continued performance and loyalty to the Debtor. Consequently, I believe that the relief requested in the Employee Wages Motion is necessary and appropriate under the facts and circumstances of this Chapter 11 case.

63. It is my belief that each of the Employee Benefits Programs is an important component of the total compensation offered to the Employees and is essential to the Debtor's efforts to maintain Employee morale and minimize employee attrition. I believe that the expenses associated with the Employee Benefits Programs are reasonable and necessary in light of the potential Employee attrition, loss of morale, and loss of productivity that would occur if such programs were discontinued.

64. I respectfully submit that without the requested relief in the Employee Wages Motion, it is probable that Employees at all levels of the Debtor's organization will leave for alternative employment. Such a development would deplete the Debtor's workforce, hindering the Debtor's ability to operate during this case and restructure. The loss of valuable Employees and the resulting need to recruit new personnel to replenish the Debtor's workforce would be distracting and counterproductive at this critical time. Further, it is my belief that if the Debtor loses valuable Employees, they will incur significant expenses in locating, recruiting and training replacements that would far exceed the costs of the Compensation and Benefits Programs for a lost Employee. Indeed, I believe that if they do not pay the Prepetition Employee Obligations, the remaining Employees may become demoralized and unproductive because of the significant financial strain and other hardships many of the Employees will experience as a result.

65. In addition to Employee attrition, I believe that failure to maintain the Compensation and Benefits Programs and satisfy the Prepetition Compensation Obligations will likely jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtor's businesses. The majority of the Debtor's Employees rely exclusively on their compensation and benefits to satisfy their daily living expenses and needs. These Employees will be exposed to significant financial difficulties and other distractions if the Debtor is not permitted to honor its employee-related obligations. If the Court does not authorize the Debtor to maintain the Compensation and Benefits Programs and honor its Prepetition Compensation Obligations, many Employees will be deprived of their income and lose access to critical benefits at a time when the Debtor needs its Employees to perform their jobs at peak efficiency. It is my belief that the loss in morale and distraction of Employees worrying about paying their bills and other necessary expenses will harm the Debtor's ability to operate.

66. I believe that the relief requested in the Employee Wages Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11. Accordingly, on behalf of the Debtor, I respectfully request that the Employee Wages Motion be approved.

- iii. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Maintain Existing Insurance Policies and Pay All Insurance Obligations Arising Thereunder, (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (C) Maintain Surety Bonds; and (II) Granting Related Relief (the "Insurance Motion").

67. In the Insurance Motion, the Debtor seeks entry of an order authorizing the Debtor to maintain its existing insurance policies and pay all premiums, taxes, deductibles, administration costs, consulting fees, brokers' fees, assessments, or other fees arising thereunder or in connection therewith in the ordinary course of business and renew, supplement, modify, or purchase insurance

coverage as needed in the Debtor's business judgment without further order of the court and related relief. In addition, the Debtor seeks authority to maintain and renew its surety bond program in the ordinary course of business and pay certain obligations relating thereto.

68. The Debtor maintains numerous Insurance Policies administered by multiple third-party Insurance Carriers. The Insurance Policies provide coverage for, among other things, property, automobile liability, umbrella liability, workers' compensation, directors' and officers' liability, directors' and officers' and fiduciary liability, cyber enterprise risk management liability, and various related excess liability

69. Premiums on the Insurance Policies are paid by the Debtor either on a monthly or annual basis. The Debtor intends to renew or replace any expiring Insurance Policies, keeping the coverage consistent with its present coverage but taking into consideration certain factors that may have affected the Debtor's business or the cost of the policies, such as, among other things, the changes in the insurance marketplace. The Debtor does not anticipate that any amounts will be due and owing as of the Petition Date for premiums on the Insurance Policies.

70. The Debtor typically obtains certain of the Insurance Policies through the assistance of certain insurance Brokers. The Brokers assist the Debtor by aiding with the procurement and negotiation of certain Insurance Policies and enable the Debtor to obtain those policies on advantageous terms at competitive rates and in a cost-effective manner.

71. The agreements between the Debtor and the Brokers provide for the Brokers' collection of commission payments for services rendered related to the Insurance Policies. The commission percentage is determined by the Insurance Carriers depending on the Debtor's line of business. Commissions paid to the Brokers are included in the premium paid by the Debtor. The Debtor does not believe that any amounts are due and owing to the Brokers on account of fees and

commissions as of the Petition Date, but as a precaution, requests authority to pay any such prepetition amounts in the ordinary course of business and consistent with past practices.

72. The Debtor maintains a Workers' Compensation Program that provides coverage for employee-related injuries, disabilities, or death, as prescribed by state and federal workers' compensation laws and other statutes.

73. Under the laws of the state where the Debtor operates, the Debtor is required to maintain the Workers' Compensation Program for its Employees for Workers' Compensation Claims. The Workers' Compensation Program is administered by Federal Insurance Company. The Workers' Compensation Program provides coverage for the Debtor's employees in the states where the Debtor operates, as well as related employer liability arising from the Workers' Compensation Claims. The premium for the Workers' Compensation Program is \$198,691.00 for the calendar year, paid in a single annual payment in advance, but subject to an audit and adjustment annually at the end of each policy period. Through the Insurance Motion, the Debtor seeks to pay all amounts due in connection with the Workers' Compensation Program, including all deductibles and any other amounts related to any prepetition workers' compensation claims, including as a result of any audit, in the ordinary course of business, without any cap.

74. In the ordinary course of business, the Debtor is required to provide Surety Bonds to (a) United States Bureau of Customs and Border Protection to secure the Debtor's payment or performance of certain obligations, including duties, taxes, and fees on account of goods imported from foreign countries, and (b) Utah Department of Alcoholic Beverage Services to maintain the Debtor's alcoholic beverage manufacturing and warehousing license. The Debtor does not believe that any amounts are due and owing under the Surety Bond Program as of the Petition Date, but as a precaution, requests authority in the Insurance Motion to pay surety bond premiums, including

any related to the prepetition period, as they come due in the ordinary course of business and consistent with past practices.

75. I believe that the failure to receive the requested relief at the outset of this Chapter 11 case would expose the Debtor to direct liability for payment of claims otherwise covered by the Insurance Policies, distract the Debtor from the vital task of stabilizing its business through this process, and disrupt the Debtor's operations at this important juncture. The relief requested in the Insurance Motion is necessary for the Debtor to operate its business in the ordinary course and preserve and maximize the value of the Debtor's operations and its estate for the benefit of all stakeholders. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11.

- iv. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Honor Certain Prepetition Obligations to Customers and (B) Otherwise Continue Certain Customer Programs in the Ordinary Course of Business and (II) Granting Related Relief (the "Customer Programs Motion")

76. In the Customer Programs Motion, the Debtor seeks entry of interim and final orders authorizing the Debtor to maintain its existing Customer Programs in the ordinary course of business and honor prepetition obligations related thereto and granting related relief.

77. Prior to the commencement of this Chapter 11 case, in the ordinary course of business, the Debtor implemented certain programs, practices, incentives, credits, and other accommodations described and defined below, including (a) a Plastic Returnable Dunnage Program, (b) a Raw Material Credit Policy, and a Volume-Based Rebate Program. These Customer Programs are designed to generate goodwill, maintain loyalty, ensure the Debtor's operations are conducted in an environmentally friendly and sustainable manners, and improve the

Debtor's profitability by maximizing the satisfaction of the Debtor's Customers with the Debtor and its products.

78. Maintaining the goodwill of and sustaining the Customer relationships via the Customer Programs is critical to the Debtor's ongoing operations and the preservation and maximization of the value of the Debtor's assets. Failure to continue the Customer Programs and satisfy certain prepetition obligations in connection therewith would risk alienating the Debtor's most loyal and valuable current Customers, jeopardizing future patronage and revenue from such Customers and adversely affecting this Chapter 11 case.

79. Accordingly, by the Customer Program Motion, the Debtor seeks authority, but not direction, to continue administering the Customer Programs and to honor prepetition obligations thereunder in the ordinary course of business as the Customer Programs are critical to the Debtor's ongoing operations in this Chapter 11 case and will maximize the value of the estate for the benefit of all of the Debtor's stakeholders.

- v. Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to Pay Certain Prepetition Taxes and Fees and (II) Granting Related Relief (the "Taxes and Fees Motion").

80. In the Taxes and Fees Motion, the Debtor requests entry of an order that authorizes the Debtor to remit and pay certain taxes and fees accrued prior to the Petition Date that are or will become payable during the pendency of this Chapter 11 case, including any penalties and interest thereon, to certain federal, state, county, and city taxing, licensing and regulatory authorities.

81. In the ordinary course of business, the Debtor incurs or collects and remits (a) a variety of Taxes, including sales and use, personal property, and other Taxes and (b) business license fees, compliance and regulatory fees, and other similar fees and assessments related to the Debtor's Licenses and Permits needed to operate its businesses. Taxes and Fees are remitted and

paid by the Debtor through checks and electronic transfers that are processed by its banks and other financial institutions. The Debtor estimates that approximately \$1,578,264 in prepetition Taxes and Fees has accrued and are unpaid as of the Petition Date, of which approximately \$1,300 is currently payable or will become payable after the Petition Date and before a final hearing on the Taxes and Fees Motion.

82. Any failure to pay the Taxes and Fees could materially disrupt the Debtor's business operations. First, the Debtor collects and holds certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and such funds may not constitute property of the Debtor's estate. Second, the failure to pay Taxes and Fees may negatively impact the Debtor's restructuring efforts because, among other things, (a) Authorities may now initiate audits of the Debtor, which would unnecessarily divert the Debtor's attention from the restructuring process, (b) Authorities may attempt to suspend the Debtor's operations, file liens, seek to lift the automatic stay, and pursue other remedies that would harm the estate, and (c) certain of the Debtor's directors and officers could be subject to claims of personal liability, which would likely distract them from their duties related to the Debtor's restructuring. Finally, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, reducing creditor recoveries.

83. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11.

- vi. Debtor's Motion for Entry of Interim and Final Orders (I)(A) Approving the Debtor's Proposed Adequate Assurance of Payment for Future Utility Services, (B) Approving the Debtor's Proposed Procedures for Resolving Additional Assurance Requests, and (C) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services; and (II) Granting Related Relief (the "Utilities Motion").

84. In the Utilities Motion, the Debtor seeks entry of an order approving the Debtor's proposed adequate assurance of payment for future utility services, approving the Debtor's proposed procedures for resolving requests for adequate assurance, prohibiting utility providers from altering, refusing, or discontinuing services, and granting related relief.

85. In connection with the operation of its business and management of its properties, the Debtor obtains internet, electricity, natural gas, water, waste management, and other similar services from a number of Utility Providers. As of the Petition Date, the Debtor had approximately 17 active utility accounts.

86. Uninterrupted Utility Services are essential to the Debtor's ongoing business operations and, hence, the overall success of this Chapter 11 case. The Debtor's business operations require uninterrupted electricity, internet, heat, water, and other utility services. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtor's business operations would be severely disrupted. Such disruption would adversely affect customer goodwill and employee relations, which, in turn, would jeopardize the Debtor's reorganization efforts. Accordingly, it is essential that the Utility Services continue uninterrupted during this Chapter 11 case.

87. The Debtor believes that it is substantially current with respect to its Utility Services obligations. On average, the Debtor pays approximately \$636,920.00 each month for Utility Services, calculated as a historical average payment for the last six (6) months.⁴ The Debtor does not anticipate this monthly average will change materially during the initial thirty days following

⁴ This average reflects the average monthly cost over the last six (6) months for the Debtor's active accounts for Utility Services as of the Petition Date.

the commencement of this Chapter 11 case. Accordingly, the Debtor estimates that its cost for Utility Services during the next thirty (30) days will be approximately \$636,920.00.

88. The Debtor intends to satisfy postpetition obligations owed to the Utility Providers in a timely manner. The Debtor believes that cash held by the Debtor, cash generated in the ordinary course of business, and cash available to the Debtor under its proposed debtor in possession financing facility will provide sufficient liquidity to pay the Debtor's Utility Service obligations in accordance with its prepetition practice.

89. The Debtor believes that the foregoing satisfies the requirements under section 366 of the Bankruptcy Code, which requires the Debtor to provide adequate assurance of payment for future utility services. Nonetheless, as additional adequate assurance of payment, the Debtor proposes to deposit a \$318,460.00 Adequate Assurance Deposit, into a separate, segregated Adequate Assurance Account for the benefit of the Utility Providers. The Adequate Assurance Deposit represents an amount equal to half of the Debtor's average monthly cost of Utility Services, as of the Petition Date, calculated as a historical average payment for the last six (6) months.

90. The Adequate Assurance Deposit will be held in a separate, segregated account for the duration of this Chapter 11 case, for the benefit of each Utility Provider, subject to each of the Debtor's respective rights to terminate or discontinue the applicable Utility Services and may be applied to any postpetition defaults in payment to the Utility Providers. The Adequate Assurance Deposit will be held by the Debtor.

91. I believe that uninterrupted Utility Services are essential to the Debtor's ongoing business operations and that any disruption of Utility Services, even for a brief period, would severely affect customer goodwill and employee relations and jeopardize the Debtor's prospects

for a successful emergence from bankruptcy. Therefore, it is critical that Utility Services continue uninterrupted during this Chapter 11 case.

- vii. Debtor's Motion for Entry of an Order (A) Authorizing the Debtor to Reject the AriZona Beverages USA LLC Can Supply and Production Contract Effective as of the Petition Date and (B) Granting Related Relief (the "Contract Rejection Motion").

92. In the Contract Rejection Motion, the Debtor seeks to reject the Contract, effective as of the Petition Date.

93. Prior to the Petition Date, the Debtors and its advisors began the process of reviewing and analyzing contracts to which the Debtor is a party. Based on this analysis, the Debtor has determined, in its business judgment, that there is no longer a need for, or benefit to the Debtor or its estate to maintain, the Contract going forward.

94. The Debtor has determined that the Contract does not provide a material benefit to the Debtor or its estate and is not necessary to the Debtor's reorganization process.

Pursuant to 28, U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: December 9, 2024
Salt Lake City, Utah

/s/ Alan Boyko
Name: Alan Boyko
Title: Senior Managing Director
FTI Consulting, Inc.