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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
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In re:

Chapter 11

EVERFRESH BEVERAGES, INC. AND  
SUNDANCE BEVERAGES, INC.,

Case Nos. 95 B 45405 (JHG)  
95 B 45406  
(Jointly Administered)

Debtors

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**ORDER APPROVING THE STIPULATION  
REGARDING CROSS-BORDER INSOLVENCY PROTOCOL  
(A&F #2)**

Upon the order to show cause dated December 14, 1995 and the application (the "Application" of Everfresh Beverages, Inc. ("Everfresh"), and Sundance Beverages, Inc., debtors and debtors-in-possession (jointly, the "Debtors"), seeking entry of an order, pursuant to Section 105 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), approving the stipulation regarding Cross-Border Insolvency Protocol (the "Stipulation"), a copy of which is annexed hereto as Exhibit "1" [**and a hearing having been held**]; and it appearing that no further notice of the Application is required; and sufficient cause appearing therefor; it is

ORDERED, that, pursuant to Section 105 of the Bankruptcy Code, the Stipulation is hereby approved in its entirety.

Dated: New York, New York  
December 20, 1995

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x :

In re:

Chapter 11

EVERFRESH BEVERAGES, INC. AND  
SUNDANCE BEVERAGES, INC.,

Case Nos. 95 B 45405 and  
95 B 45406 (JHG)

Debtors

The Honorable Burton  
R. Lifland, USBJ

-----x :

(Jointly Administered)

ONTARIO COURT (GENERAL DIVISION)  
IN BANKRUPTCY

CASE NO. 32-077978

IN THE MATTER OF THE PROPOSAL OF  
ERAGES, INC. OF THE :  
REGIONAL MUNICIPALITY OF PEEL, IN  
THE PROVINCE OF ONTARIO

The Honourable Mr. Justice EVERFRESH BEV-  
Farley

-----x :

**STIPULATION REGARDING CROSS-BORDER INSOLVENCY PROTOCOL**

**WHEREAS**, on November 17, 1995 (the "Filing Date"), Everfresh Beverages, Inc. ("Everfresh"), debtor and debtor-in-possession, and Sundance Beverages, Inc. ("Sundance"), debtor and debtor-in-possession (jointly, the "Debtors"), filed in the United States Bankruptcy Court for the Southern District of New York (together with any other court having jurisdiction over the bankruptcy cases, the "Bankruptcy Court") their respective voluntary petitions for reorganization (the "Chapter 11 cases") under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"); and

**WHEREAS**, no trustee has been appointed in the Chapter 11 cases and pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession, and the Bankruptcy Court entered an order authorizing the joint administration of the Debtors' Chapter 11 cases for procedural purposes; and

**WHEREAS**, on December 1, 1995, the Bankruptcy Court appointed an official committee of unsecured creditors in these Chapter 11 cases (the “Creditors’ Committee”) and the Creditors’ Committee has selected Obermayer, Rebmann, Maxwell & Hippel as its counsel (the “Committee’s Counsel”); and

**WHEREAS**, on the Filing Date, the Bankruptcy Court entered an order (the “Emergency Order”) and thereafter on November 22, 1995, a preliminary order (the “Preliminary Order”), which orders, among other things, authorized the Debtors’ use of cash collateral and the receipt of discretionary post-petition financing from The CIT Group/Business Credit, Inc. (“CITBC”), the Debtors’ secured lender, pursuant to the terms and conditions of the Emergency Order and the Preliminary Order (together with any further orders concerning cash collateral and/or financing, the “Cash Collateral/Financing Order”) and pursuant to the terms of the stipulation and order (the “Stipulation”) between the Debtors and CITBC, as approved by the Cash Collateral/Financing Order, of an aggregate amount of \$750,000 (the “Advance”) for the purposes set forth in a budget (the “Budget”) annexed to the Stipulation, through December 12, 1995; and

**WHEREAS**, on the Filing Date, Everfresh filed a Notice of Intention to Make a Proposal (the “NOI”) to its creditors under the Bankruptcy and Insolvency Act of Canada (the “Act”) in which Ernst & Young Inc. was named as trustee under the proposal (the “Trustee”), and Everfresh filed a motion for an order in the Ontario Court (General Division), in Bankruptcy (together with any other court having jurisdiction over Everfresh’s insolvency proceeding, the “Canadian Court”) seeking the appointment of Ernst & Young Inc., as interim receiver (the “Interim Receiver”) of the property, business, and assets of Everfresh situated in Canada, which order was entered simultaneously with the filing of the NOI (the “Interim Receiver Order”), a copy of which is annexed hereto as Exhibit “A” (the proceedings under the Act and pursuant to the Interim Receiver Order being referred to as the “Canadian Proceeding”); and

**WHEREAS**, pursuant to the Interim Receiver Order, the Interim Receiver has been authorized to borrow from time-to-time up to an amount not to exceed \$400,000 from CITBC for the purposes

of carrying out its responsibilities under the terms of the Interim Receiver Order; and

**WHEREAS**, on November 27, 1995, Everfresh filed with the Official Receiver, appointed under the Act, a cash flow statement (the “Cash Flow Statement”), together with the Trustee’s and Everfresh’s reports on the Cash Flow Statement, in connection with the Canadian Proceeding; and

**WHEREAS**, it is presently contemplated that all (a) of the business and assets of every nature, tangible and intangible arising from or relating to the manufacture, distribution and sale of the Product in Canada as reflected on the books and records of Everfresh (the “Canadian Assets”) and (b) of the business and assets of every nature, tangible and intangible arising from or relating to the manufacture, distribution and sale of the Product in the United States as reflected on the books and records of Everfresh (the “US Assets”) will be liquidated through the sale thereof by the Debtors in accordance with the applicable provisions of the Bankruptcy Code and Act for the benefit of all secured, priority, and non-insider unsecured creditors of Everfresh, with the net proceeds of sale to be distributed in accordance with priorities established under the Bankruptcy Code and the Act; and

**WHEREAS**, as of the date hereof, the Debtors have been engaged in extensive negotiations with a number of potential buyers regarding the sale of Everfresh’s assets in Canada, and have reviewed letters of intent, and, accordingly, it is presently anticipated that a sale of Everfresh’s assets in Canada will occur prior to a sale of Everfresh’s assets located in the United States; and

**WHEREAS**, pursuant to paragraph 29 of the Interim Receiver Order, the Interim Receiver is ordered to have regard to the Everfresh Chapter 11 case, to cooperate with actions taken in the Everfresh Chapter 11 case and to take such steps as are required to coordinate his administration under the Interim Receiver Order with the administration of the Everfresh Chapter 11 case, where so doing would enhance the value of the Canadian Assets and to review the appropriateness or advisability of a Cross-Border Insolvency Protocol to be submitted for the consideration of the Canadian Court and the Bankruptcy Court; and

**WHEREAS**, a framework of general principles should be agreed upon to address, among

other things, issues that are likely to arise in connection with the cross-border insolvency proceedings of Everfresh, including, without limitation, (a) the sale of Everfresh's Canadian Assets; (b) the sale of Everfresh's US Assets; (c) the disposition of the proceeds of sale of the Canadian Assets and the US Assets (together, the "Assets"); (d) the determination of claims asserted against Everfresh, and the allowability and priority status of such claims; (e) the filing and implementation of a plan of reorganization under the Bankruptcy Code and a scheme or proposal under the Act (the "Proposal"), and (f) general administrative matters, similar to the principles proposed in the article of Committee J of the Section on Business Law of the International Bar Association entitled Cross-Border Insolvency Concordat (the "Concordat"), a copy of which is attached hereto as Exhibit "B", and that an agreement upon such matters is essential to the orderly and efficient administration of these cross-border cases; and

**WHEREAS**, the purpose of the protocol proposed in this Stipulation is to protect the interests of all creditors of Everfresh (in a situation where there is more than one plenary forum and no main forum as provided for in Principle 4 of the Concordat) wherever located and to protect the integrity of the process by which the Chapter 11 case and the Canadian Proceeding is administered.

**NOW THEREFORE**, the Debtors, CITBC, and the Creditors' Committee by their respective counsel, and Ernst & Young Inc., in its capacity as Interim Receiver and Trustee under the Proposal, hereby stipulate and agree, subject to Bankruptcy Court and Canadian Court approval, as follows:

1. The Debtors and the Interim Receiver will (i) have regard to the proceedings initiated by Everfresh under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and under the Act in the Canadian Court; (ii) co-operate with actions taken in both the Bankruptcy Court and the Canadian Court; and (iii) take steps to coordinate their respective administrations under the Bankruptcy Code and the Act in the Bankruptcy Court and the Canadian Court.

2. The Debtors, the Creditors' Committee and the Interim Receiver, and any other official representative that may be appointed by the Bankruptcy Court or the Canadian Court, shall receive notice of all proceedings in accordance with the practices of the respective Courts, and have the right to appear in all proceedings in any fora, whether in the Bankruptcy Court or the Canadian Court, subject

to paragraph 7 hereof. The Debtors and the Interim Receiver shall be subject to jurisdiction in both fora for any matter related to the insolvency proceedings, but appearing in a forum shall not subject him/her to jurisdiction for any other purpose in the forum estate, except to the extent otherwise set forth herein to the contrary.

3. The Interim Receiver shall be permitted to act in a manner consistent with the terms of the Interim Receiver Order under Canadian law, and Everfresh shall be permitted to act in a manner consistent with the terms of the Act, the Bankruptcy Code, the Interim Receiver Order, and the Cash Collateral/Financing Order, provided that, (a) such prior advance notice as is reasonably practicable under the circumstances of any transaction and hearing thereon concerning the use, sale or lease of Everfresh's Assets outside the ordinary course of business (the "Transactions") and (b) prior notice of those actions proposed to be taken in either the Chapter 11 cases or the Canadian Proceeding where notice of such action is required to be given under the applicable laws of procedures of the governing forum, shall be provided (the "Notice Procedures") by overnight mail, overnight delivery service or facsimile to counsel to the Debtors, Angel & Frankel, P.C. 460 Park Avenue, New York, New York 10022, Attn: Bruce Frankel, Esq., the Interim Receiver at Ernst & Young, Inc. P.O. Box 251 - 21st Floor, Toronto Dominion Centre, Canada M5K 1B7, Attn: Alex Morrison, counsel to CITBC, Dewey Ballantine, 1301 Avenue of the Americas 10019, Attn: Stuart Hirshfield, Esq., special counsel to the Debtors, Lang Michener, BCE Place, Suite 2500, 181 Bay Street, Toronto, Ontario, Canada M5J 2T7, Attn: Joseph Marin, Esq., Canadian counsel to CITBC, Cassels, Brock & Blackwell, Scotia Plaza, Suite 2100, 40 King Street West, Toronto, Ontario, Canada M5H 3C2, Attn: Bruce Leonard, Esq., the Office of the United States Trustee, 80 Broad Street, Third Floor, New York, New York 10004, Attn: Catherine Lotrionte, Esq., the Committee's Counsel, Obermayer, Rebmann, Maxwell & Hippel, Packard Building, 111 South 15th Street, Philadelphia, PA 19102-2688, Attn: Lawrence J. Tabas, Esq., and the Committee's Canadian counsel, Stikeman, Elliott, Commerce Court West, P.O. Box 5t300 - Suite 5300, Toronto, Ontario, Canada M5L 1B9 Attn: David Byer, Esq., and all persons appearing on the notice of appearance list as reflected on the docket of the Chapter 11 cases and supplied by Everfresh to the Interim Receiver (the "Specified Parties"), which foregoing notice shall be in lieu of notice to all creditors of Everfresh.

4. All creditors of Everfresh shall have the right to appear in any forum to the same extent

as creditors of the forum state, regardless of whether they have filed claims in that particular forum. All creditors shall have the opportunity to file a notice of appearance with the Clerk of the Bankruptcy Court, the Alexander Hamilton U.S. Customs House, One Bowling Green, 5th Floor, New York, New York 10004 or to participate in the proceedings in the Canadian Court; provided, however, that such filing or participation may subject such creditor to the jurisdiction in the Court in which the notice or appearance is filed or made.

5. Information publicly available in any forum state shall be publicly available in both fora. To the extent permitted, non-public information shall be made available to official representatives of the Debtors, including any official committee appointed in these cases and shall be shared with other official representatives, subject to appropriate confidentiality arrangements and all privileges under the applicable rules of evidence.

6. Transactions relating to the Canadian Assets will be subject to the sole approval of the Canadian Court. Transactions relating to the US Assets will be subject to the sole approval of the Bankruptcy Court. Any transactions involving the Assets located both in Canada and the United States will be subject to the joint jurisdiction of the Bankruptcy Court and the Canadian Court. To the extent not otherwise provided for under the Act or the Bankruptcy Code, notice and requirements for approval and authorization of any Transactions shall be in accordance with the Notice Procedures and shall be provided by the Interim Receiver or the Debtors, as the case may be, to the Specified Parties.

7. All creditors of Sundance must file their proofs of claim with the Clerk of the Bankruptcy Court, the Alexander Hamilton U.S. Customs House, One Bowling Green, 5th Floor, New York, New York 10004. Any creditor of Everfresh may file a proof of claim in either the Bankruptcy Court or in the Canadian Proceeding. However, if a creditor files a claim in both the Bankruptcy Court and the Canadian Proceeding, then distribution to such creditor will be adjusted so that recovery is not greater than if the claim were filed in only one forum. A timely filed claim in either the Bankruptcy Court or the Canadian Proceeding will be deemed timely filed in both the Bankruptcy Court and the Canadian Proceeding. The Debtors and the Interim Receiver will endeavor to coordinate notice procedures and establish the same deadline for the filing of claims against the Debtors in both the Bankruptcy Court

and the Canadian Proceeding, and all other matters regarding the filing, reviewing and objecting to claims.

8. The Bankruptcy Court shall have jurisdiction over all claims governed principally by the laws of the United States or any of its states. In the event that claims are governed principally by the laws of Canada, the objection to such claims may be brought in either the Canadian Proceeding or the Bankruptcy Court, as mutually agreed upon by the Interim Receiver and the Debtors, or if an agreement cannot be reached, by further order of the Canadian Court. Nothing in this Stipulation shall be deemed to bind a creditor to the foregoing forum selection for filing of objections to claims. The adjudicating forum shall decide the value, allowability and priority of claims filed using a choice of law analysis based upon the choice of law principles applicable in that forum. A creditor's rights to collateral and set-off will be determined under the choice of law principles applicable in that forum, except to the extent set forth in paragraph 12 hereof. No person will be subject to a forum's substantive rules unless under the choice of law principles applicable in that forum such persons would be subject to the forum's substantive laws in a lawsuit on the same transaction in a non-insolvency proceeding, except to the extent set forth in paragraph 12 hereof. Nothing herein shall limit the right of any party-in-interest to object to claims to the extent permitted under Section 502(a) of the Bankruptcy Code and the Bankruptcy Rules nor shall anything herein alter the substantive rights of any party filing a claim in any fora.

9. Neither this Stipulation nor any actions taken pursuant hereto is intended nor shall it have any affect on the rights of creditors, the Interim Receiver, or the estates of the Debtors with regard to the applicability of Section 508(a) of the Bankruptcy Code and any similar provisions under the Act or the Interim Receiver Order, it being intended that such Section 508(a) be, to the extent applicable, enforced in both fora. Neither this Stipulation nor any actions taken pursuant hereto are intended to nor shall they in any manner prejudice or affect the powers, rights, claims and defenses of (i) E&Y, the Debtors, their estates or any of their creditors under applicable law, including the Act and any other relevant Canadian law and the Bankruptcy Code, or (ii) the Creditors' Committee under Section 1103 of the Bankruptcy Code.

10. The proceeds of all Transactions shall be distributed in accordance with the laws of the jurisdiction approving such Transactions. The Bankruptcy Court and the Canadian Court shall apply their respective schemes for distribution to creditors, including, without limitation, the priority treatment respectively accorded to such claims under the Bankruptcy Code or the Act. Any proceeds available after the satisfaction in full of all valid allowed secured claims asserted against Everfresh, and the funding of the Budget, and the Cash Flow Statement as from time-to-time amended shall be maintained by Everfresh in the United States, in an account specifically designated for plan funding (the “Account”), which Account shall be maintained in accordance with Section 345 of the Bankruptcy Code. The distribution of all monies in the Account shall be pursuant to the terms of the Bankruptcy Code and the Act.

11. The classification and treatment of unsecured claims, meaning claims other than priority or secured claims, shall be determined by the Debtors, as to the Canadian Proceedings after consultation with the Trustee under the Proposal.

12. Except to the extent set forth in an order of the Canadian Court, all creditors subject to the jurisdiction of the Bankruptcy Court shall be subject to the avoiding laws set forth in the Bankruptcy Code, and other applicable laws of the United States which shall be the controlling law of each case to the extent permitted by applicable international law, notwithstanding anything to the contrary in paragraph 8. No avoiding actions will be taken by the Interim Receiver in Canada without the express written consent of the Debtors or as may be directed by the Canadian Court.

13. To the extent permitted by the laws of the respective jurisdictions and to the extent practicable, the Interim Receiver and the Debtors shall endeavor to submit a proposal in Canada and a plan of reorganization in the United States substantially similar to each other and the Debtors, the Interim Receiver and the Trustee shall endeavor to coordinate all procedures in connection therewith, including, without limitation, all solicitation proceedings relating thereto, and all procedures regarding voting, the treatment of creditors, classification of claims, and the like, will either be established by the Debtors after consultation with the Trustee of the Proposal or be dealt with pursuant to a further order of the Bankruptcy Court and or the Canadian Court. In order to coordinate the contemporane-

ous filing of the Proposal and the plan of reorganization, the Debtors shall take the actions necessary to seek extensions from time-to-time of the date for the filing of the Proposal, and the Debtors shall take the actions necessary from time-to-time to seek extensions of the exclusive time period during which only the Debtors may file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code.

14. Except with respect to matters where the Interim Receiver appears before the Bankruptcy Court pursuant to paragraph 2 hereof, the Canadian Court shall have sole jurisdiction and power over the Interim Receiver, including, without limitation, its tenure in office, the conduct of the liquidation proceedings under Canadian law, the retention and compensation of the Interim Receiver and other Canadian professionals, and the hearing and determination of matters arising in the liquidation proceedings under Canadian law. The Interim Receiver, and Lang Michener, shall be compensated for their services in accordance with Canadian principles under Canadian law, such that the Interim Receiver and Lang Michener are not required to file fee applications with the Bankruptcy Court, provided, that, they be paid as provided for in the Budget and the Cash Flow Statement to the extent contemplated by the Cash Collateral/Financing Order, the Interim Receiver be compensated under the provisions of the Interim Receiver Order to the extent consistent with the Cash Collateral/Financing Order, and notice of such payment is given pursuant to the Notice Procedures to the Specified Parties. The order entered by the Bankruptcy Court authorizing the retention of Lang Michener as Canadian counsel to the Debtors is hereby deemed to be modified to conform to the foregoing provisions.

15. The Bankruptcy Court shall have sole jurisdiction and power over the conduct of the Chapter 11 cases, the compensation of the professionals rendering services to the Debtors and to the Creditors' Committee in the United States, and the hearing and determination of matters arising in the Chapter 11 cases. This Stipulation shall be without prejudice to the rights of the Debtors to seek the substantive consolidation of their estates in accordance with the Bankruptcy Code.

16. This Stipulation shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, trustees (including any trustees of the Debtors under Chapters 7 or 11 of the Bankruptcy Code), and receivers, receiver managers, or custodians appointed under Canadian law, as the case may be.

17. This Stipulation may not be waived, amended or modified orally or in any other way or manner (including, without limitation, pursuant to a plan of reorganization of the Debtors) except by a writing signed to a party to be bound, and such approval and authorization of the Bankruptcy Court or the Canadian Court as may be necessary and appropriate under the circumstances. Notice of any proposed amendment or modification of the Stipulation shall be provided by the party providing such to the Specified Parties in accordance with the Notice Procedures. This Stipulation may be supplemented from time to time by the parties hereto as circumstances require with any supplementing stipulations as approved by the Bankruptcy Court and the Canadian Court.

18. Any request for the entry of an order which is contrary to the provisions of this Stipulation must be made on notice by the proponent of the order to the Specified Parties in accordance with the Notice Procedures.

19. Each party represents and warrants to the other that its execution, delivery and performance of this Stipulation are within the power and authority of such party and have been duly authorized by such party, except that, with respect to the Debtors and the Interim Receiver, Bankruptcy Court and Canadian Court approval is required.

20. This Stipulation may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by facsimile signature, which shall be deemed to constitute an original signature.

21. The Bankruptcy Court and the Canadian Court shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of this Stipulation or approving any amendments or modifications thereto.

22. The parties hereto are hereby authorized to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate this Stipulation.

23. This Stipulation shall be deemed effective upon its approval by the Bankruptcy Court and the Canadian Court.

**IN WITNESS WHEREOF**, the parties hereto have caused this stipulation to be executed either individually or by their respective attorneys or representatives hereunto authorized.

DATED: New York, New York  
December 20, 1995

**ANGEL & FRANKEL, P.C.**  
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and Sundance Beverages, Inc., debtors and  
debtors-in-possession

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**ERNST & YOUNG INC.**

As Interim Receiver for Everfresh Beverages, Inc., and Trustee  
of the Proposal

By: \_\_\_\_\_

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