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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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IN THE MATTER OF DETERMINING) Order No.: S-19-2751-20-CO01
Whether there has been a violation of the)
Securities Act of Washington by:) CONSENT ORDER
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American Beef Operations, LLC)
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Respondent)

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INTRODUCTION

Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division of the Department of Financial Institutions (“Securities Division”) and Respondent American Beef Operations, LLC do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent American Beef Operations, LLC neither admits nor denies the Findings of Fact and Conclusions of Law as stated below.

FINDINGS OF FACT

Respondent

1. American Beef Operations, LLC (“ABO”) is a Washington entity formed on September 25, 2015 with its principal place of business in Mercer Island, Washington. Anthony Garwood was the Chief Executive Officer of ABO from September 25, 2015 until he passed away on March 11, 2019. From March 11, 2019 until present, Anthony’s wife, Julie Garwood, has been the Chief Executive Officer of ABO.

Related Entities

2. American Beef Processing, LLC (“ABP”) is a Delaware entity formed on August 19, 2004 with its principal place of business in Mercer Island, Washington.

1 3. American Beef Processors of Oregon, LLC (“ABPO”) is a Delaware entity formed on May
2 14, 2007 with its principal place of business in Clackamas, Oregon. ABPO is a wholly-owned subsidiary
3 of ABP.

4 4. SafeFresh Technologies, LLC (“SafeFresh”) is a Delaware entity formed on July 5, 2000 with
5 its principal place of business in Mercer Island, Washington. At the time of his death, Anthony Garwood
6 owned approximately 61% of SafeFresh.

7 **Overview**

8 5. Anthony Garwood was an inventor who spent more than twenty years, from approximately
9 1998 until his death in 2019, developing a process for chilling and separating lean beef from fat. This
10 technology is known as the “Chilled Beef, Rapid Separation” (CBRS) technology. The CBRS technology
11 that Mr. Garwood invented is the subject of multiple patents that are held by SafeFresh.

12 6. From at least 2005 until 2010, ABP raised approximately \$10 million from approximately 95
13 investors. The funds were to be used to develop a process for recovering lean beef from fatty beef cuts
14 using the CBRS technology. ABP was a start-up company that was trying to operate a prototype meat
15 processing plant located in Clackamas, Oregon. ABP spent all of its investors’ funds, but was unable to
16 make the Clackamas plant operational or to generate any revenues from the plant. ABP is also subject to
17 significant liens, including a lien for more than \$5 million and a lien for approximately \$700,000 with
18 accrued interest to date of more than \$400,000 for equipment lending.

19 7. From 2015 until 2019, ABO has raised more than \$5.3 million from more than 100 investors,
20 many of whom are Washington investors, through the offer and sale of ABO LLC membership interests.
21 Most of the investors heard about the investment through word of mouth referrals and/or presentations,
22 generally from other ABO investors and from Mr. Garwood. Before investing, ABO investors were given
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1 private placement memorandums. Several different versions of the private placement memorandums were
2 used to solicit ABO investments. Some investors also received a business plan prior to investing.

3 **Misrepresentations and Omissions**

4 8. When offering and selling its LLC interests, ABO falsely represented that it was going to own
5 and operate a meat processing plant located in Clackamas, Oregon. In a January 2017 business plan, ABO
6 represented that it was raising funds for equipment that was needed in order to be “fully operational at our
7 plant in Clackamas, OR.” The business plan represented that investor funds would be used to purchase
8 \$1,400,000 worth of assets, including a spiral freezer; grinders, pumps and manifolds; centrifuges; plate
9 heat exchangers, chillers and separators; and filtration systems. However, contrary to the representations
10 in the business plan, ABO did not own the Clackamas plant or the equipment that was being purchased.

11 9. On November 6, 2019, Ms. Garwood testified before the Securities Division that ABPO, as a
12 wholly-owned subsidiary of ABP, owned all of the equipment located at the Clackamas plant, while the
13 plant itself (the land and building) was owned by a third-party landlord that was not related to ABO, ABPO,
14 or ABP. Ms. Garwood testified that ABO was only loaning money to ABPO for the development of the
15 Clackamas plant. Ms. Garwood also testified that ABO would own nine future processing plants with a
16 production capacity of 16,000 pounds per hour per plant. Ms. Garwood testified that the anticipated cost
17 of each facility would be around \$6 million and the projected revenues from the operation of the first one
18 or two plants would fund the construction of all of the remaining plants.

19 10. When offering and selling ABO LLC membership interests, ABO failed to disclose to
20 investors the terms of the loan agreements between ABO and ABPO. A Loan Agreement dated October
21 13, 2015 required ABPO to make payments to ABO equal to 75% of ABPO’s positive EBITDA (earnings
22 before interest, taxes, depreciation, and amortization) for each month, without specifying any due date. An
23 Amended and Restated Loan Agreement dated June 10, 2019 added a due date of March 1, 2027.
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1 11. When offering and selling LLC interests, ABO provided investors with misleading financial
2 projections. For example, the 2017 business plan projected that ABO would generate \$7 to \$10 million in
3 annual revenue and would have an EBITDA of 36% to 43% within 18 months of “inception,” without
4 specifying an exact date. However, ABO failed to disclose to investors that ABPO would be the company
5 receiving any revenues from the operation of the Clackamas plant and that ABO would not have any
6 ownership of the Clackamas facility.

7 12. When soliciting investments, ABO provided investors with materially inconsistent financial
8 projections. For example, a November 2015 private placement memorandum indicated that it would cost
9 \$159 million to add an additional eight systems (at an estimated cost of approximately \$20 million each)
10 after the completion of the first system, located in Clackamas, Oregon. The projected cost of \$20 million
11 per plant is materially different from Julie Garwood’s testimony that the cost of a plant was about \$6 million.
12 The November 2015 PPM also projected that at the end of Year 1 (in October 2016), with one plant
13 operating at 16,000 pounds per hour, ABO would have a negative EBITDA of \$11,896,945. This projection
14 is materially different from ABO’s January 2017 business plan projection of \$7 to \$10 million of annual
15 revenues and an EBITDA of 36% to 43% within 18 months.
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17 13. When offering and selling ABO investments, ABO failed to disclose the financial operating
18 history of ABO, ABP, and ABPO. ABO failed to disclose to ABO investors that ABP and ABPO had been
19 trying to develop the Clackamas processing plant for at least ten years at a cost of more than \$10 million
20 without commercial success. ABO failed to provide the ABO investors with financial statements or
21 financial information for ABP and ABPO. ABO failed to provide the ABO investors with financial
22 statements for ABO or to disclose that ABO reported a net loss of approximately \$117,000 in 2016, a net
23 loss of approximately \$82,000 in 2017, and a net loss of approximately \$68,000 in 2018.
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1 14. When offering and selling ABO LLC units, ABO failed to disclose to investors that it would
2 be adjusting and discounting the LLC unit price and thereby diluting the value of the ABO LLC units. For
3 example, in November 2015, ABO offered and sold its LLC membership interests at \$500 per unit. A few
4 months later, by at least February 2016, ABO offered and sold its LLC units at \$100 per unit. ABO also
5 offered and sold “bonus” LLC units. Some investors were offered “2 for 1,” “3 for 1,” or “4 for 1” LLC
6 units based on the general offering price that was then in effect for the ABO LLC units.

7 15. When offering and selling ABO LLC membership interests to investors, ABO also failed to
8 disclose the amount and the terms of the licensing fees that were payable from ABO to SafeFresh.
9 According to the original License Agreement dated September 26, 2015, ABO was to pay SafeFresh a fixed
10 non-refundable license fee of \$1,250,000 for each 16,000 pounds per hour processing system and a royalty
11 of 5.25% of ABO’s gross revenues from the sale of processed meat. An Amended and Restated License
12 Agreement dated May 24, 2019 requires ABO to pay SafeFresh a fixed non-refundable license fee of
13 \$2,500,000 and the 5.25% royalty. Both of the license agreements specify minimum payments and time
14 limits that have to be met to keep the license in effect.
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16 **Registration Status**

17 16. American Beef Operations, LLC is not currently registered to sell its securities in the state of
18 Washington and has not previously been so registered.

19 Based upon the above Findings of Fact, the following Conclusions of Law are made:

20 **CONCLUSIONS OF LAW**

21 1. The offer and/or sale of the ABO LLC interests described above constitute the offer and/or
22 sale of a security as defined in RCW 21.20.005(14) and (17).
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1 2. ABO has violated RCW 21.20.010, because, as set forth in the Tentative Findings of Fact,
2 ABO made untrue statements of material fact or omitted to state material facts necessary to make the
3 statements made, in light of the circumstances in which they were made, not misleading.

4 3. ABO has violated RCW 21.20.140 because, as set forth in the Tentative Findings of Fact, there
5 was no registration for an offer or sale of ABO securities on file with the Securities Administrator.

6 Based upon the foregoing and finding it in the public interest:

7 **CONSENT ORDER**

8 IT IS AGREED AND ORDERED that Respondent American Beef Operations, LLC, their agents and
9 employees each shall cease and desist from violating RCW 21.20.140, the securities registration section of
10 the Securities Act of Washington.

11 IT IS FURTHER AGREED AND ORDERED that Respondent American Beef Operations, LLC, their
12 agents and employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the
13 Securities Act of Washington.

14 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

15 IT IS FURTHER AGREED that Respondent American Beef Operations, LLC, entered into this
16 Consent Order freely and voluntarily and with a full understanding of its terms and significance.

17 IT IS FURTHER AGREED that in consideration of the foregoing, Respondent, American Beef
18 Operations, LLC, waives its right to a hearing and to judicial review of this matter pursuant to RCW 21.20.440
19 and Chapter 34.05 RCW.

20 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

Signed this 13th day of January, 2020

Signed by:

American Beef Operations, LLC

/s/ _____

American Beef Operations, LLC

By: Julie Garwood, Managing Member

Approved as to form by:

/s/ _____

Marlo DeLange, Attorney

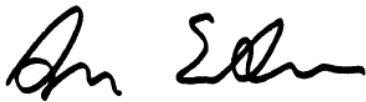
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SIGNED and ENTERED this 22nd day of January, 2020



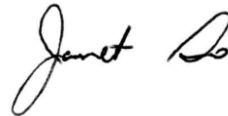
William M. Beatty
Securities Administrator

Approved by:



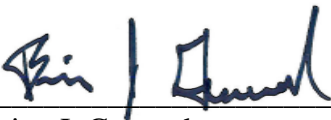
Suzanne E. Sarason
Chief of Enforcement

Presented by:



Janet So
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Reviewed by:



Brian J. Guerard
Financial Legal Examiner Supervisor