



**Family Fresh Growers Market Pty Ltd as Trustee for Family Fresh Growers Market Trust
ACN 635 190 591
(Family Fresh)**

Statutory Report to Creditors

We refer to our initial information for creditors dated 11 May 2021 in which we advised you of our appointment as liquidator and your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

We will also be requesting that you consider our detailed remuneration approval report and consider a resolution to approve our remuneration.

1 Update on the progress of the liquidation

1.1 Background and trading history

Family Fresh was incorporated on 30 July 2019 and operated from leased premises located at 1/1397 Wanneroo Road, Wanneroo WA 6065. The principal business was a retail fresh fruit and vegetable market store, which also specialised in selected gourmet foods, trading as Family Fresh Growers Market at Drovers.

In its capacity as trustee of Family Fresh Growers Market Trust, Family Fresh commenced trading in early FY20.

At the time of the Liquidators' appointment, Ms Helena Nunes was the sole director of Family Fresh (**Director**), taking over from the former director (and husband) Mr Reinaldo Nunes (**Former Director**) in October 2019. The Director is also the sole shareholder of the company.

Family Fresh was part of a larger corporate Group, holding ownership of family interests in IGA supermarkets in the northern suburbs of Perth.

Related entities (in addition to Family Fresh) are listed below (all are currently in external administration):

- SKB Australia Pty Ltd atf KBS Family Trust and t/as Darch SUPA IGA (**SKB**);
- Mainteam Holdings Pty Ltd atf Redside Trust and t/as Ellenbrook IGA (**Mainteam**);
- Villanex Pty Ltd atf Villanex Trust and t/as Aveley Liquor (**Villanex**); and
- Evermaze Pty Ltd atf Evermaze Trust and trading as Vale IGA (**Evermaze**).

Family Fresh traded at a loss since incorporation and was the beneficiary of financial support from related entities, predominantly SKB.

On commencement of the business, significant roadworks were being undertaken to Wanneroo Road in relation to the nearby Joondalup Drive flyover construction works, which was scheduled to be complete during February 2020. These roadworks were significantly delayed, which the Director advises materially impacted the performance of the Family Fresh business from its outset.

Prior to the appointment of the Liquidators, Family Fresh had been experiencing substantial periods of working capital deficiency, cash flow pressure and accumulating liabilities with key creditors, including its landlord Goldrange Pty Ltd (**Goldrange**). Family Fresh's inability to meet rent and outgoings due to its landlord appears to have been a long term issue for the company, and totalled circa \$265,000 as at the date of appointment of the Liquidators. The build up of accumulated unpaid liabilities was also coupled with SKB's reduced capacity to provide financial assistance.



On 4 March 2021, the electricity supply to Family Fresh was disconnected over a dispute as a result of an accumulated liability owed to its primary electricity provider, which resulted in stock losses and a period of business disruption.

On 21 April 2021, the Director made the decision to cease trading the Family Fresh business. As a result of that decision and due to significant overdue rent and outgoings, Goldrange entered into possession of the premises on 22 April 2021.

Subsequently, on 27 April 2021, the Director passed a resolution to appoint Rob Kirman and Rob Brauer as Liquidators of Family Fresh.

1.2 Report on Company Activities and Property / Books and Records

In a liquidation, directors are required to submit a Report on Company Affairs and Property (**ROCAP**), setting out a detailed assessment of the company's asset and liability position to the liquidators.

Immediately on appointment, the Liquidators requested the Director provide (i) a completed ROCAP, (ii) a completed questionnaire outlining the causes of failure of Family Fresh, and (iii) any other books and records on hand.

The Director submitted a ROCAP on 3 June 2021. The ROCAP omitted secured creditor debts and some classes of employee entitlements. The Director also failed to complete the ROCAP Questionnaire.

The Liquidators have obtained Company records, including Xero management accounts (**Xero**) and physical books and records.

2 Estimated assets and liabilities

Based on Xero and the Director's ROCAP, set out below is a summary of Family Fresh's asset and liability position, as well as the Liquidators' view on estimated realisable values.

Summary of financial position					
\$	Notes	Director's ROCAP	Xero	Liquidators' ERV	
				Low	High
Assets					
Cash	2.1	237	(17,125)	3,848	3,848
Bank guarantee	2.2	25,000	25,000	-	-
Accounts receivable	2.3	710	710	-	-
Stock	2.4	-	-	-	-
Plant and equipment	2.5	10,041	581,565	5	5
Bond	2.6	-	22,941	7,500	7,500
Total assets		35,989	613,091	11,353	11,353
Liabilities					
Priority employee creditors	2.7	-	(38,159)	(41,784)	(20,125)
Secured creditors	2.8	(618,637)	(406,948)	(618,912)	(618,912)
Related party loan	2.9	(450,799)	(748,321)	(748,321)	(450,799)
Unsecured creditors	2.10	(504,897)	(504,897)	(595,451)	(496,209)
Statutory liabilities	2.11	-	(4,198)	(4,198)	(4,198)
Total liabilities		(1,574,332)	(1,664,364)	(1,966,881)	(1,570,117)
Net assets / (liabilities)		(1,538,344)	(1,051,273)	(1,955,528)	(1,558,764)



2.1 *Cash*

Family Fresh maintained two bank accounts with Bankwest (**Bankwest**). On appointment, the Liquidators issued a request (which has been facilitated) to Bankwest to close the respective accounts and transfer the balance of funds to the Liquidators' account. The balance of \$3,097 has been secured by the Liquidators.

The balance of cash recovered by the Liquidators relates to cash held on-site by the business on cessation of trading.

2.2 *Bank guarantee*

At appointment, a bank guarantee of \$25,000 supported by funds in term deposit with Bankwest was held by Goldrange. The bank guarantee was called upon by Goldrange shortly after entering into possession of Family Fresh's trading premises. As at the date of the Liquidators' appointment Goldrange were owed approximately \$265,000.

2.3 *Accounts receivable*

Xero and the Director's ROCAP reported accounts receivable of \$710 relating to two related party debtors, both of which are currently in liquidation, and no return is expected.

2.4 *Stock*

Prior to the appointment of the Liquidators, a related entity SKB provided support to Family Fresh by way of funding and provision of stock from SKB's premises in Darch. Upon the Director's decision to cease trading the Family Fresh business, the stock funded and/or transferred from SKB, with an estimated value of circa \$2,000, was returned.

There was an additional immaterial amount of stock (largely perishable) remaining on-site at the time of Goldrange entered into possession of the Wanneroo premises.

For the above reasons, no stock was recovered or realised by the Liquidators.

2.5 *Plant and equipment*

The Director's ROCAP reported an estimated realisable value (**ERV**) for Family Fresh's plant and equipment of \$10,041 comprising flooring, checkout cabinets and other assorted supermarket and display equipment.

As detailed above, prior to the appointment of the Liquidators, Goldrange took possession of the Family Fresh premises on account of unpaid rent (of circa \$265,000). In taking possession of the trading premises, Goldrange also took possession of the remaining plant and equipment on site.

Assessments by the Liquidators determined that costs to recover and realise the plant and equipment onsite would likely exceed its realisable value.

Family Fresh entered into an equipment finance agreement with Flexirent Capital Pty Ltd (**Flexirent**) in relation to the purchase of specific packaging, display and refrigeration equipment, including cool rooms. A review of all plant and equipment and cool rooms onsite at the Wanneroo premises failed to locate any of the Flexi-rent funded equipment, or the cool rooms purported to be installed at the site. The Liquidators are further investigating this matter.

2.6 *Bond*

The Liquidators have recovered a pre-appointment wholesale market retail bond of \$7,500 in relation to historical supply arrangements with a former fresh produce supplier, which has been banked into the liquidation bank account.

2.7 *Priority employee creditors*

Based on discussions with the Director and former employees:

- all but one employee appear to be casually employed;
- wages were paid up to the date of the Liquidators' appointment; and
- outstanding employee entitlements comprise (i) annual leave of circa \$2,000 for the non-casual employee, and (ii) unpaid superannuation totalling \$18,125 for the period from 1 April 2020 to the Liquidators' appointment.



Some of the limitations in the books and records, which could not be explained by the Director, include a "Payroll Accruals Payable" account with an outstanding balance of \$20,034 recorded in Xero management accounts, which may include unpaid wages, unpaid annual leave and/or long service leave entitlements.

The Liquidators have written to all known employees regarding their unpaid superannuation and sought details in relation to any other potential unpaid entitlements in which they may be owed.

Based on employee responses to date and the books and records of Family Fresh, the Liquidators' estimate of priority creditors is set out in the table below:

Priority creditors				
\$	Director's ROCAP		Liquidators' ERV	
		Xero	Low	High
Wages	-	} (20,034)		
Annual leave	-		(20,034)	(2,000)
Long service leave	-			
	-	(20,034)	(20,034)	(2,000)
Superannuation	-	(18,125)	(21,750)	(18,125)
Total	-	(38,159)	(41,784)	(20,125)

To the extent employee creditors believe they are owed employee entitlements, please contact the Liquidators' office to lodge details of your claim and obtain further information regarding the Fair Entitlements Guarantee (FEG) scheme.

Superannuation is not afforded a priority by FEG, and therefore can only be met by relevant assets recovered in the liquidation. The Liquidators are currently liaising with the ATO in relation to the unpaid superannuation.

As noted in section 5 following, the Liquidators consider it unlikely there will be sufficient recoveries in the liquidation to satisfy any priority creditor claims.

2.8 Secured creditors

Family Fresh's secured creditors comprise Flexirent Capital Pty Ltd (**Flexirent**) and Thorn Australia Pty Ltd (**Thorn Australia**) both of whom funded asset acquisitions.

Secured creditors				
\$	Director's ROCAP		Liquidators' ERV	
		Xero	Low	High
Flexirent	(551,156)	(551,156)	(551,156)	(551,156)
Thorn Australia	(67,481)	(45,326)	(67,756)	(67,756)
Total	(618,637)	(596,482)	(618,912)	(618,912)

2.8.1 Flexirent

Flexirent held four Other Goods registered security interests relating to a variety of plant and equipment which it had financed Family Fresh to purchase comprising packaging, display and refrigeration equipment (including cool rooms).

The Liquidators facilitated an inspection of the premises by Flexirent, however, the purported plant and equipment detailed in relevant security documentation was not identified.

2.8.2 Thorn Australia

Thorn Australia (**Thorn**) held one Other Goods registered security interest relating to Family Fresh's IT system and point of sale terminals, and as at the date of appointment of the Liquidators was owed \$67,756.



As outlined previously, the landlord took possession of Family Fresh's premises prior to the Liquidators' appointment. Accordingly, the Liquidators have disclaimed any interest in the assets.

2.8.3 Other PPSR registrations

At appointment, Metcash and six other grocery suppliers had a total of two ALLPAP and seven Other Goods PPSR registrations in relation to Family Fresh. Given (i) the landlord's possession of the Wanneroo property, and (ii) the immaterial amount of stock remaining at the site on appointment, the value of these security interests would appear to be nil, and the relevant creditor amounts are therefore effectively unsecured.

2.9 Related party loans

The books and records of Family Fresh record related party loans totalling \$748,321 owing to the Former Director and SKB (which is in administration).

Related party loans				
\$	Director's ROCAP		Liquidators' ERV	
		Xero	Low	High
Former Director	(450,799)	(450,799)	(450,799)	(450,799)
SKB	-	(272,577)	(272,577)	(272,577)
Total	(450,799)	(723,376)	(723,376)	(723,376)

The Liquidators have not yet verified the related party claims above but have (i) confirmed that they rank as unsecured claims in the liquidation, and (ii) assumed the position of the Xero accounts in both scenarios for the purposes of this report.

Both related party loan accounts appear to relate to financial and operational support provided to Family Fresh to fund its long term trading losses.

2.10 Unsecured creditors

The Director's ROCAP discloses outstanding unsecured creditors totalling circa \$0.5 million, which is broadly consistent with the books and records of the Company.

The Liquidators have reviewed and identified a number of duplicate entries within the Director's ROCAP that are also disclosed as secured or related party creditors.

Having regard to the above, the Liquidators currently estimate unsecured creditors to total between circa \$0.5 million and circa \$0.6 million, albeit the Liquidators have not sought proofs of debt from creditors to date, nor have they adjudicated any claims received.

2.11 Statutory liabilities

The books and records of the company report statutory liabilities of \$4,198 for outstanding payroll tax.

3 Investigations

The Liquidators have obtained books and records of Family Fresh, which includes bank statements and various trading records. The Liquidators have also obtained further documents available via public register information and the Freedom of Information Act.

The Liquidators have carried out a high-level review of the above documents and conducted preliminary investigations in relation to potential Liquidator recoveries, including:

- insolvent trading;
- uncommercial transactions; and
- unfair preference payments.



To date the Liquidators have identified (i) a material insolvent trading claim against the Director, and potentially the former director, and (ii) the potential for unfair preferences or uncommercial transactions that require further investigation.

On review of Family Fresh's books and records, the Company:

- was loss making since incorporation (circa \$679,788 in FY20 and \$370,719 FY21 YTD);
- reported a net liability position in each month and financial year since incorporation; and
- is likely to have been insolvent relatively soon after incorporation.

In relation to insolvent trading, the Liquidators note:

- the preliminarily quantum of such a claim is likely to be substantial, albeit at this stage unquantified;
- relevant claims may need to be apportioned between the Director and Former Director based on the respective periods in which they were directors of Family Fresh during the period of insolvency (noting the Director assumed the role following Mr Nunes' resignation in October 2019); and
- notwithstanding the size of the potential claim, both the Director and Former Director declared bankruptcy in late June 2021 and early July 2021 respectively, and therefore any recoveries from a claim are unlikely and potentially uncommercial to pursue. The Liquidators have been in contact with the respective Bankruptcy Trustee and will shortly submit a proof of debt on behalf of Family Fresh in order to participate in any dividend should one be declared.

In relation to unfair preferences, a review of company records indicate:

- pressure was applied to Family Fresh by a number of creditors to repay outstanding amounts and/or enter into payment arrangements; and
- some material payments appear to have been made to creditors in the six month period prior to the Liquidators' appointment (**Relation Back Period**).

Accordingly, the Liquidators will investigate the potential for any unfair preferences, including carrying out a detailed review of bank statements and other records, and pursue those further where commercial to do so.

It should be noted that the Liquidators are yet to complete their investigations, and a further update to creditors will be provided should any information come to their attention that alters the current view.

As part of their statutory obligations, the Liquidators of Family Fresh are also required to lodge an investigative report with ASIC pursuant to section 533 of the Act in relation to the affairs of Family Fresh, and the conduct of the Director. This report will be prepared and lodged on completion of the Liquidators' investigations.



4 **Receipts and payment to date**

Enclosed are details of all receipts and payments in the liquidation to date.

5 **Likelihood of a dividend**

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- the size and complexity of the liquidation;
- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

Based on (i) information available to the Liquidators at this time, and (ii) there being minimal (if any) other assets available to creditors, we consider it unlikely that a dividend will be payable to any class of creditor absent material recoveries being made from liquidators' recovery actions (refer section 3).

Should this position change, the Liquidators will contact you to lodge a proof of debt, which formalises the record of your claim in the liquidation and is used to determine all claims against Family Fresh.

6 **Cost of the liquidation**

We enclose a detailed report on our remuneration, called a Remuneration Approval Report.

We propose to have our remuneration approved by a proposal without a meeting.

To vote on the proposal, you must return the enclosed voting form to our office by post, fax or email by 16 August 2021. You must also include a completed proof of debt and supporting information to substantiate your claim. A proof of debt form is enclosed, together with guidance notes to assist you when you complete it.

We also enclose an Australian Restructuring Insolvency and Turnaround (**ARITA**) information sheet on passing resolutions without a meeting.

7 **What happens next?**

We will proceed with the liquidation, which will include:

- realising any remaining assets;
- recovering any further available property;
- completing our investigations into Family Fresh's affairs;
- if identified, pursuing any viable claims for statutory recovery actions; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**).

We may write to you again with further information on the progress of the liquidation.

We expect to have completed this liquidation within 6-12 months.

8 **Where can you get more information?**

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Phoebe Donaldson on 08 6363 7619. For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.



Dated: 27 July 2021

Rob Kirman
Liquidator

Enclosures:

- 1 Remuneration Approval Report
- 2 ARITA Information Sheet – Approving remuneration of an external administrator
- 3 Notice of Proposal to Creditors
- 4 ARITA Information Sheet – Proposals without meeting
- 5 Proof of Debt (Form 535)
- 6 Proof of Debt Guidance Notes
- 7 General information for attending and voting at meetings of creditors (if required)
- 8 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading