

EXHIBIT B

DECLARATION OF ANTHONY DEVINCENTIS

I, Anthony Devinentis, declare as follows:

Background

1. I am the Chief Executive Officer and cofounder of Fresh Farms E-Liquid, LLC (Fresh Farms), a tobacco product manufacturer of premium e-liquids based in Orange County, CA. I started Fresh Farms in 2015 by partnering with three other former smokers with the intent of helping people transition away from their smoking habits. Fresh Farms is now recognized as a premium brand of e-liquids with a unique blend of flavors utilizing the best manufacturing practices and naturally sourced ingredients.

2. As a former combusted cigarette smoker, I was able to successfully switch to exclusive use of vaping products. When I started this company, I was a former pack-a-day smoker. I believe that using ENDS products helped me quit smoking, a goal I was not able to achieve by using lozenges and nicotine replacement therapy. Vaping was the only thing that worked for me. It has become a personal mission for me to be able to provide adult smokers with an appealing and potentially less harmful alternative to combusted cigarettes.

3. I hold a bachelor's degree in business administration from San Diego State University. In my current role, I am responsible for the topline management of our operations. I oversee our sales department, manufacturing, and logistical relationships and processes, and am responsible for all financial decisions for the company, including inventory, infrastructure, and capital. I oversee product development and key partnerships.

Fresh Farms

4. Fresh Farms manufactures flavored e-liquids for use in open-system electronic nicotine delivery systems (ENDS). These open system e-liquids are offered in a variety of

nicotine levels and eleven (11) different flavors. The majority of our sales are through multi-chain retailers and distributors. Although we sell online, it is through state licensed online retailers. Our company's own website no longer permits direct-to-consumer sales. We do not market any closed-system (e.g., pod) or disposable vaping products.

5. Fresh Farms vehemently opposes sales of its products to minors. We are concerned and committed to stopping vape products from getting into the hands of underaged consumers. For this reason, we follow best practices to restrict underage sales. Our #no2minors campaign helps raise awareness of this movement and our responsibility to guard against underage sales. This campaign is featured prominently in our social media. Our social media presence is carefully monitored to restrict youth access and our posts prominently feature products, not models or aspirational imagery. In the past, when our website was open to consumers, we performed age verification using BlueCheck software and implemented order limits to prohibit straw sales to minors. Currently, as part of the #no2minors program, Fresh Farms enters into agreements with distributors and retailers that, among other things, provide for the following: (i) compliance with FDA and Federal Trade Commission advertising restrictions; (ii) social media and advertising sites that contain nicotine warnings, "Not For Sale To Minors" notices, and age-gating; (iii) third party monitoring of compliance; and (iv) contract termination where the distributor or retailer fails to comply with steps required to protect against underage sales. The company has never received an enforcement action brought by any federal, state, or local authority related to underaged consumers.

6. Fresh Farms currently has 12 full-time employees, partners with 10-15 contractors, and has manufacturing and logistic partnerships that extend our company. Product manufacturing occurs at Cue Industries, LLC ("Cue") based in Santa Ana, California. Cue is ISO

certified and has a quality management system at every level during production, including incoming raw material verification and finished product testing and tracking. Our e-liquids make up almost 95% of our business. Our topline revenue was \$8.3M in 2020.

7. Fresh Farms has invested roughly \$150-300K into e-liquid manufacturing operations through Cue, including quality control efforts. Our company has engaged a third-party legal team that has audited our manufacturing facility. FDA also has audited our facility previously without issue. The partners collectively invested \$200,000 to start the company.

8. While we have 12 employees, we also work regularly with 10-15 contractors, and as mentioned, we are a partner to logistic and manufacturing companies. For instance, fifty percent of our manufacturer's (Cue) revenue is derived from Fresh Farms products. There are over 75 employees who work at Cue. Our logistical partner company has 11-12 employees, and they, too, heavily rely on us for revenue. Taking into account all of these employees, their health insurance, and the families whom they support, along with 401(k)s, there would be massive losses across the board if Fresh Farms were to shut down.

Premarket Tobacco Product Applications (PMTA)

9. Our PMTAs were a combined effort among regulatory consultants, attorneys, labs, and multiple project teams. Personally, the effort I put into completing the application, and in particular proving that our products would be appropriate for the protection of public health, was by far the most ambitious and difficult task I have ever undertaken in my life. The most satisfying part of this process was seeing the data from toxicological testing on our products, suggesting our products are much less risky than traditional cigarettes.

10. For the PMTA process, we now have invested at least a half million dollars; however, once we consider ongoing costs, such as updating the comprehensive literature review

and ongoing testing to prepare for FDA’s scientific review questions, we will easily reach four million dollars. We have also invested significant amounts of time and human capital on our PMTAs, starting them at the beginning of 2019.

11. The COVID pandemic also caused delays and challenges during the PMTA process. Our workers were forced to initially work from home. When we brought our employees back to our facility, we had them tested regularly, installed precautionary measures such as a temperature scanner and a minimum 6 feet distance between work stations, and we have our facility cleaned at least four times a week. We had to outsource harmful and potentially harmful constituent (HPHC) testing and stability testing, among others.

12. It was an enormous undertaking to meet the PMTA deadline. Per FDA guidance, we continue to develop product-specific data (e.g., shelf-life stability data) and are conducting ongoing research and literature reviews to supplement our PMTAs within the next couple of months. In addition, we are doing continuous quality control work, starting with our quality management protocols. This will be reported to FDA. We would have never attempted to complete the PMTAs without the chance to market our products for another year assuming we filed them by FDA’s compliance deadline. The almost overwhelming time and cost commitment would have otherwise been prohibitive for a company like Fresh Farms.

13. One of our outside consultants is the firm North Guide Solutions, Inc. (“North Guide or NGS”), based in Ontario, California. NGS is a third-party boutique consultant company that specializes in providing regulatory and quality compliance services for ENDS. In July 2020, Fresh Farms reached out to NGS for quality compliance services, including assistance with development of standard operating procedures (SOPs). We also needed a team that could make updated submissions to the Center for Tobacco Products (CTP) Portal and package all of our

PMTAs for the submission by the September 9, 2020 filing deadline. NGS took the lead on ensuring the PMTAs were properly submitted.

14. On September 3-5, 2020, Fresh Farms received confirmations from FDA that all 22 PMTAs were received by FDA through the CTP Portal.

15. On January 5, 2021, Fresh Farms received a Refuse to Accept (RTA) letter from FDA stating that there was an issue with the electronic format of the PMTA submissions. The RTA also stated that Fresh Farms did not submit certain tobacco product information or environmental assessments. The RTA noted that Fresh Farms could file new PMTAs.

16. We have since discovered that a staffer at NGS had attempted to upload to FDA's CTP Portal the formatted PDFs containing cover letters and all 22 PMTAs (for a total of 44 PDFs), but instead inadvertently uploaded temporary PDF files that were associated with each of the 44 PDFs. It appears that these temporary files were created when the staffer downloaded zip files (provided by another Fresh Farms consultant) containing the actual cover letter and PMTA PDFs. The file names for the temporary files look virtually identical to the file names for the correct PDFs. The only exception is that the file names for the temporary files begin with a ".__". The NGS staffer did not realize she was uploading temporary PDFs that did not contain the actual cover letters and PMTAs. We believe this is why FDA could not open the submitted files. In support of this declaration, NGS has submitted its own declaration detailing this unintentional mistake and providing evidence demonstrating that the correct PDFs existed and were ready to file with FDA before the September 9, 2020 deadline.

17. At the time of submission, we in good faith believed that Fresh Farms had submitted complete and compliant PMTAs in PDF format by the September 9, 2020 deadline.

Upon receiving the RTA, we promptly refiled the PMTAs on January 6-7, 2021, containing the correct cover letter and PMTA PDFs.

18. On January 6, 2021, Azim Chowdhury, counsel for Fresh Farms, sent an email to Sequoia Bacon, CTP Regulatory Health Project Manager, asking her to confirm the company would receive the original filing dates of September 3-5, 2020. Fresh Farms needed confirmation so it would be able to continue selling its products during the PMTA review process.

19. On January 15, 2021, I called Ms. Bacon to confirm the status of the refiled PMTAs and was informed that Fresh Farms would not receive filing dates of September 3-5, 2020. Ms. Bacon followed-up on this call with a confirming email.

20. Due to an unintentional error on the part of a third-party consultant, Fresh Farms will now have to remove its e-liquid products from the market (comprising the vast majority of our business), which could likely force the company to close its doors unless FDA grants Fresh Farms the original filing dates. That would mean numerous job losses, with former employees at our company and business partners being forced out into a weak and faltering economy without health insurance and benefits. It also means that I, along with my business partners, will lose everything we invested into this company over the past half decade – both financial and personal.

21. It seems completely out of proportion for FDA to deny Fresh Farms the benefit of the initial filing dates when FDA's inability to read the PDFs was the result of an honest mistake made by a staffer at one of our PMTA consultants, a mistake that Fresh Farms was able to quickly correct without any additional work required of FDA.

22. We appreciate the incredible hard work and dedication that FDA is devoting to the PMTA process and ensuring that manufacturers like Fresh Farms receive a fair review and

hearing so that companies like ours can remain on the market and adult addicted smokers will continue to have a safer alternative to more dangerous cigarettes.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 3, 2021

Anthony Devincentis

Anthony Devincentis