

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

KANGADIS FOOD INC.
d/b/a The Gourmet Factory,

Chapter 11

Case No. 14-72649 (REG)

Debtor.

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**FIRST AMENDED DISCLOSURE STATEMENT FOR PLAN OF
REORGANIZATION FOR KANGADIS FOOD INC.
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL TO THE BANKRUPTCY COURT BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT AT THIS TIME. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1125.

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Dated October 8, 2014

**BANKRUPTCY COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT
CONSTITUTE BANKRUPTCY COURT APPROVAL, OR ITS RECOMMENDATION ON THE
MERITS OF DEBTOR'S PLAN OF REORGANIZATION**

I. INTRODUCTION

Kangadis Food Inc. (the "**Debtor**") submits this First Amended Disclosure Statement (the "**Statement**") pursuant to section 1125 of title 11, United States Code (the "**Bankruptcy Code**"). The Statement is provided to all of the Debtor's known creditors in order to disclose the information deemed to be material, important and necessary for the Debtor's creditors to arrive at a reasonably informed decision in exercising their rights to vote on the First Amended Plan of Reorganization proposed by the Debtor (the "**Plan**").¹ A copy of the Plan is annexed hereto as **Exhibit A**. Also accompanying the Plan and Statement is a creditor's voting ballot (the "**Ballot**") for the acceptance or rejection of the Plan, together with a copy of the Order approving the Statement and Scheduling a Hearing on Confirmation of the Plan.

Definitions and Exhibits

Definitions. The definitions and designations of terms and names in the Plan apply to the Statement and you should refer to the Plan for such definitions and designations.

Exhibits. All Exhibits to the Statement are incorporated as if fully set forth and are a part of the Statement.

Notice to Creditors

The Debtor believes that confirmation and implementation of the Plan is in the best interest of the Debtor's estate and its creditors. Based on the liquidation analysis annexed hereto as **Exhibit B** (the "**Liquidation Analysis**"), the Debtor believes that the distributions provided for in this Plan exceed the distributions that unsecured creditors would receive if the Debtor's assets were liquidated. For this reason, the Debtor believes that approval of the Plan is the best opportunity for Creditors to receive payments with respect to Allowed Claims.

Pursuant to Bankruptcy Code §1125, on October [], 2014, the Bankruptcy Court approved this Statement for submission to the holders of Claims against, or Interests in, the Debtor. On _____ 2014 at ____ a.m. a hearing will be held to consider confirmation of the Plan before the Honorable Robert E. Grossman, United States Bankruptcy Judge, United States Bankruptcy Court, Alfonse M. D'Amato Federal Courthouse, Courtroom 860, 290 Federal Plaza, Central Islip, New York 11722.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed on or before **4:00 p.m.** on _____, **2014**. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the filing of a notice of the adjourned date on the Bankruptcy Court's docket, or the announcement of the adjourned date at the Confirmation Hearing (or at any subsequent adjourned date for the Confirmation Hearing). Creditors entitled to vote may vote on the Plan by filling out and mailing the accompanying Ballot to SilvermanAcampora LLP ("**SilvermanAcampora**"), attorneys for the

¹ Capitalized terms not otherwise defined in this Statement shall have the meanings set forth in the Plan.

Debtor, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attention: Sheryl P. Giugliano, so the Ballot is received on or before _____ **2014 at 4:00 p.m.**

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan, vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class, that cast their Ballots, vote to accept the Plan. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

Bankruptcy Code §1129(b) permits confirmation of the Plan, notwithstanding rejection by one or more Classes of Claims, if: (i) at least one impaired Class has accepted the Plan; and (ii) the Bankruptcy Court finds that the Plan does not "discriminate unfairly," and is "fair and equitable" with respect to the rejecting Class. This procedure is generally referred to as "cram-down."

The purpose of this Statement is to inform all Claim holders of the information deemed to be material, important and necessary in order to make an informed judgment about the Plan, and to vote for the acceptance or rejection of the Plan, where voting is necessary.

The approval by the Bankruptcy Court of this Statement does not constitute a recommendation by the Bankruptcy Court as to the merits of the Plan, only that the Statement contains "adequate information" from which creditors may form an opinion as to the merits of the Plan.

The financial information contained in this Statement has not been subject to a certified audit. Accordingly, the Debtor is unable to warrant or represent that the information is accurate and complete in all respects, although the Debtor has used its best efforts to set forth information and disclosures which are complete and accurate. This Statement has been prepared on the basis of assumptions which the Debtor believes to be reasonable, however, there can be no assurance that these assumptions will prove to have been accurate.

II. EXPLANATION OF CHAPTER 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor may reorganize or liquidate its business and assets.

Since the Petition Date, the Debtor has managed its affairs as debtor and debtor-in-possession under Bankruptcy Code §§1107 and 1108.

The formulation and confirmation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case. A chapter 11 plan sets forth the means of satisfying or discharging the claims against or interests in a chapter 11 debtor. Chapter 11 does not require that each holder of a claim against a debtor vote in favor of a plan in order for the Bankruptcy Court to approve a plan. If any class of claimants is impaired by a plan, the plan must be accepted by at least one "impaired" class of claims or interests. A claim or interest is deemed impaired if the plan provides that the claimant: (i) will not be repaid in full; (ii) will have any of its legal rights altered; or (iii) has an interest that is adversely affected. The holder of an impaired claim or interest is entitled to vote to accept or reject the plan if the claim or interest is an allowed claim or interest under Bankruptcy Code §502, or temporarily allowed for voting purposes under Bankruptcy Rule 3018.

III. THE DEBTOR PRIOR TO THE CHAPTER 11 CASE

Description of the Debtor's Business

The Debtor is a food import and distribution company formed in 2003. The Debtor is a leading importer of olives and other European delicacies, and is a leading distributor of olive oil. The Debtor sells its products under the brand names "Capatriti,"TM "Porto,"TM "Olio Villa,"TM "Zorba,"TM and "Kivotos"TM. The Debtor's customers consist primarily of wholesale vendors who then sell direct to consumers.

For the past six years, the popularity of the Debtor's olive oil product sold under the brand name "Capatriti" has grown over time, and it is one of the leading brands in the New York metropolitan area. The Debtor employs 51 people, and operates from a 75,000 square foot facility located in Hauppauge, New York, that serves as a warehouse, production facility, and shipping center.

Themistoklis Kangadis ("T. Kangadis") is the Debtor's Chief Executive Officer and President, and his father, Aristidis Kangadis is the Debtor's Senior Vice President. Dennis DeTore is the Debtor's Chief Financial Officer, and Michael Rizzo is the Debtor's Controller. Themistoklis Kangadis' mother, Andromachi Kangadis, is Secretary of the Debtor, but she is not an employee of the Debtor. Themistoklis Kangadis 49.50% of the Debtor's shares, Aristidis Kangadis owns 25.25% of the Debtor's shares, and Andromahi Kangadis owns 25.25% of the Debtor's shares,

KFM is a non-debtor affiliate of the Debtor which owns the real property and building from which the Debtor operates its business in Hauppauge, New York, pursuant to a lease agreement. KFM is not liable for the debts of the Debtor, nor is it a debtor before the Bankruptcy Court. KFM owes the Debtor \$684,573.00 which will be repaid to the Debtor after the Effective Date. Exhibit D to this Disclosure Statement provides that \$500,000.00 of the \$684,573.00 amount will be paid to the Debtor on the Effective Date. The remaining amount will be paid as soon as practicable after the the Effective Date.

Loan from Citibank

In or about January 2012, the Debtor opened a credit facility with Citibank in the original maximum amount of \$3,000,000.00. On or about March 7, 2013, Citibank increased the maximum borrowing amount to \$6,000,000.00, as evidenced by a Master Note, pursuant to which Citibank has made loans, advances, extensions of credit, and other financial accommodations (the "Loan"). The Loan is secured by a first-priority security interest in all assets and personal property of the Debtor, pursuant to a General Security Agreement and duly filed UCC-1 financing statements. The maximum availability under the Loan is determined according to a formula based upon, among other things, the Debtor's accounts receivable, inventory, and previous amounts extended under the Loan. The purpose of the Loan is for purchase of inventory and other working capital.

T. Kangadis and Aristidis Kangadis personally guaranteed repayment of all loans, extensions of credit and financial accommodations provided under the Loan, pursuant to written guaranties.

On September 13, 2013, Citibank reduced the maximum borrowing amount available under the Loan to \$5,000,000.00. In March 2014, the Loan matured and Citibank further reduced the maximum borrowing amount available under the Loan to \$3,500,000.00. Citibank did not renew the Loan and, since March 2014, the Debtor has been unable to borrow money under the Loan.

As of the Petition Date, the Debtor was indebted to Citibank in the amount of \$3,500,000.00. As of the time of filing of the Amended Plan, Citibank is owed \$2,800,000.00.

The Bankruptcy Court has entered orders authorizing the Debtor to use Citibank's cash collateral subject to certain terms and restrictions. (See ECF Doc. Nos. 37 and 93). Under the Plan, Citibank's Allowed Claim will be paid in full on or before thirty (30) days after the Effective Date using the proceeds of an exit credit facility to be provided by Citibank, or within ninety (90) days after the Effective Date utilizing the proceeds of a loan to be provided by a new lender.

The Debtor's Liabilities and Assets

Although the Debtor's core business remains profitable, the Class Action lawsuit commenced against the Debtor in April 2013, described more fully below, has forced the Debtor to incur more than approximately \$1.4 million in litigation defense costs over the past sixteen months.² For the year ending December 31, 2013, the Debtor incurred losses of approximately \$4.4 million. (See Projections annexed hereto as **Exhibit C**).

The Debtor filed the Chapter 11 Case to reorganize, liquidate the amount of the Class Claim, and reduce its litigation costs by asking the Bankruptcy Court to estimate its liability, if any, to the holders of the Class Claim, and to provide a method to pay its undisputed creditors. The Debtor projects that if the Class Action proceeds to trial, the Debtor will incur approximately \$750,000.00, or more, in additional litigation costs in 2014 and 2015.

In the Class Action, District Court Judge Rakoff entered an order certifying the class, but has not made a finding of liability or damages. Originally, Judge Rakoff scheduled a jury trial to begin September 3, 2014, which might have lasted up to two weeks. The ability of the Debtor to operate its business and pay its ongoing expenses would have been severely hampered if the Debtor did not file the Chapter 11 Case, and instead paid the attorneys' fees and expenses associated with the two-week jury trial. But for these litigation costs, the Debtor's operations are profitable, and the Debtor's Plan provides that the cash flow from the Debtor's operations will be used to pay Allowed Claims, including any Allowed Class Claim.

As of the December 31, 2013, the Debtor, on an unaudited basis, had total assets of approximately \$12,259,802.00 and total liabilities, including secured debt to Citibank, of approximately \$6,136,456.00, which amount does not include any disputed claim relating to the Class Action.

Litigation

The Trade Association Action

In or about February 2013, the North American Olive Oil Association ("**NAOOA**"), a trade association representing the interests of the olive oil industry, commenced an action against the Debtor for violating Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and for deceptive acts and practices and false advertising under New York General Business Law §§ 349 and 350, titled *North American Olive Oil Association (NAOOA) v. Kangadis Food Inc.*, Index No. 13 Civ. 868, in the United States District Court for the Southern District of New York.

² The \$1.4 million in litigation defense costs includes the Debtor's litigation costs incurred in connection with the NAOOA Action, defined below.

NAOOA alleged that the Debtor labeled its bottles and tins produced and sold under the Capatriti brand, as “100% pure olive oil,” even though the Capatriti brand of oil was allegedly composed of olive pomace oil. The Debtor disputed the allegations made by NAOOA.

In or about July 2013, the Debtor and NAOOA settled the NAOOA action and entered into a confidential settlement agreement. As a result of the publicity surrounding the NAOOA action, a number of customers cancelled their orders for the Debtor’s olive oil products.

The Debtor believes that its products meet applicable regulatory standards of the FDA, USDA and International Olive Oil Council.

The Class Action

On April 8, 2013, Joseph Ebin and Yeruchum Jenkins commenced a class action against the Debtor (the “**Class Action**”) in the United States District Court for the Southern District of New York, entitled *Joseph Ebin, Yeruchum Jenkins, et al. v. Kangadis Food Inc., d/b/a The Gourmet Factory*, Index No. 1:13-cv-02311 (JSR), asserting causes of action for fraud and breach of warranty under both New York and New Jersey law relating to the Debtor’s alleged misbranding and sale of “olive-pomace oil” as “olive oil.” The Class Action relates only to the Debtor’s “Capatriti”™ brand of oil.³ The Debtor has disputed, and continues to dispute, that it has any liability to the plaintiffs in the Class Action.

As stated above, Judge Rakoff certified the Class Action under Rule 23 of the Federal Rules of Civil Procedure, over the Debtor’s objection. On December 11, 2013, Judge Rakoff issued an order granting class certification, and on February 25, 2014, issued a memorandum opinion setting forth the reasons for that ruling, and a separate memorandum order denying the Debtor’s motion for summary judgment. Among other things, Judge Rakoff found that there are triable issues of fact relating to whether olive-pomace oil is “olive oil.” Judge Rakoff did not determine: (i) whether the Debtor is liable, and if so, the amount of damages, if any; or (ii) identification of the individuals entitled to damages.

On July 30, 2014, Class Plaintiffs filed a proof of claim in the amount of \$261,640,038.59 against the Debtor’s estate, designated Claim No. 14 on the Debtor’s claims register. On September 19, 2014, the Debtor filed an objection to the Class Claim.

The Ebin II Action

On February 8, 2014, the plaintiffs in the Class Action filed a separate putative class action lawsuit against T. Kangadis, Aristidis Kangadis, Andromahi Kangadis, and KFM in the U. S. District Court for the Southern District of New York (Case No. 14 CV 1324 (JSR)) (the “**Ebin II Action**”). The complaint in the Ebin II Action alleges claims for alter-ego liability, piercing the corporate veil, fraud, negligent misrepresentation, deceptive acts or practices and breach of warranty. The defendants dispute the allegations.

On April 18, 2014, by order of U. S. District Judge Rakoff, the Ebin II Action was dismissed without prejudice because the complaint improperly revealed information designated as “Confidential” under a protective order, and violated an order of the District Court dated November 5, 2013, directing that any such complaint could be filed only after the plaintiffs in the Class Action first obtained a judgment against the Debtor. After the Debtor filed its Chapter 11 Case in the

³ There is also a pending action filed in the U.S. District Court for New Jersey titled *Toscano v. Kangadis Food, Inc.*, which is stayed as a result of the Class Action.

Bankruptcy Court, Judge Rakoff entered an order permitting the plaintiffs to re-file the Ebin II Action. The plaintiffs re-filed the Ebin II Action on June 11, 2014.

The Debtor believes that the claims set forth in the Ebin II Action are claims that belong to the Debtor's estate, and can only be properly brought by the Debtor. The plaintiffs who filed the Ebin II Action allege that they have "direct claims" against certain of the defendants in the Ebin II Action which are not part of the Debtor's estate. The Debtor believes that the plaintiffs in the Ebin II Action may pursue direct claims in the Ebin II Action, but not claims that are property of the Debtor's estate. On September 18, 2015, Judge Rakoff entered an order which, among other relief, dismissed the Direct Claims in the Ebin II Action.

The Estimation Motion

Prior to the Petition Date, the Debtor used its best efforts to settle the Class Action claim, but was unable to do so. Accordingly on the Petition Date, the Debtor filed a motion under Bankruptcy Code section 502(c) asking the Bankruptcy Court to approve procedures under which the Class Claim would be estimate purposes of distribution in the Chapter 11 Case.

On July 16, 2014, the Bankruptcy Court held a hearing on the Estimation Motion and ruled that it was premature to decide that motion until the plaintiffs in the Class Action file a proof of claim in the Chapter 11 Case. On September 25, 2014, the Bankruptcy Court granted the Estimation Motion and entered an order establishing estimation procedures. The Debtor then filed a motion in limine seeking to exclude certain materials submitted by Class Counsel in connection with the estimation hearing. The estimation procedures order provides that the estimation hearing with respect to the Class Claim will be held on November 24, 2014.

The Motion to Dismiss and/or Grant Relief from the Automatic Stay

On June 27, 2014, the plaintiffs in the Class Action filed their *Motion to Dismiss the Debtor's Petition for Bankruptcy or, in the Alternative, for Relief from the Automatic Stay* (the "**Motion to Dismiss**") (ECF Doc. No. 78). On July 16, 2014, after full briefing and a hearing, the Bankruptcy Court denied the Motion to Dismiss and, on July 28, 2014, the Bankruptcy Court issued supplemental findings (ECF Doc. No. 144) regarding, among other things, the Motion to Dismiss. On July 30, 2014, plaintiffs in the Class Action filed a Notice of Appeal of the Bankruptcy Court's denial of the Motion to Dismiss.

Complaint and Motion to Stay the Ebin II Action

On September 30, 2014, the Debtor filed an adversary proceeding complaint against the plaintiffs in the Class Action (Adv. Pro. No. 14-08276 (REG)). The Debtor's complaint seeks to have the Court enjoin the prosecution of the Ebin II Action with respect to certain claims that the Debtor believes are property of its estate. On September 30, 2014, the Debtor also filed a motion in that adversary proceeding seeking to immediately enjoin prosecution of the Ebin II Action. A hearing on that motion is scheduled for October 15, 2014.

IV. THE DEBTOR'S CHAPTER 11 CASE

Commencement and Conduct of the Chapter 11 Case

After the Petition Date, the Debtor, as debtor in possession, has been authorized to manage its business and its assets in the ordinary course of business without specific Bankruptcy Court authorization.

In connection with the Chapter 11 Case, the Debtor was provided professional services by: (i) SilvermanAcampora, as general bankruptcy counsel; (ii) WeiserMazers LLP ("**Weiser**") as its accountants; (iii) Hoffman & Baron LLP, as special counsel; and (iv) and Fox Rothschild LLP, as special counsel. The employment of SilvermanAcampora was approved by the Bankruptcy Court on July 15, 2014, effective as of the Petition Date (ECF Doc. No. 120). The employment of Weiser was approved by the Bankruptcy Court on July 15, 2014, effective as of the Petition Date (ECF Doc. No. 123). The employment of Fox Rothschild LLP as special counsel was approved by the Bankruptcy Court on July 15, 2014, effective as of the Petition Date (ECF Doc. No. 122). The employment of Hoffman & Baron LLP, as special counsel was approved by the Bankruptcy Court on July 15, 2014, effective as of the Petition Date (ECF Doc. No. 121).

First Day Motions

On the Petition Date, the Debtor filed the following motions seeking relief critical to avoid irreparable harm to the Debtor and its business (collectively, the "**First Day Motions**"). On June 10, 2014, the Bankruptcy Court conducted hearings to consider the First Day Motions designed to facilitate the Debtor's transition into chapter 11 by approving certain regular business practices that may have not been specifically authorized under the Bankruptcy Code and/or required specific Bankruptcy Court approval.

- A. Application for Entry of Order Authorizing Payment of Certain Prepetition Accrued Emergency Application for Orders (1) Authorizing the Use of Cash Collateral Pursuant to U.S.C. §§ 105, 361, 363, and 364, (2) Scheduling a Final Hearing and Establishing Notice Requirements Pursuant to Bankruptcy Rules 2002 and 4001, and (3) Granting Related Relief (ECF Doc. No. 13) (the "**Cash Collateral Motion**").

- The Bankruptcy Court approved the Cash Collateral Motion on a second interim basis on July 7, 2014 (ECF Doc. No. 93). The motion requests authority for the Debtor to utilize the cash collateral of its secured lender, Citibank, during its chapter 11 case. The Court has scheduled a hearing for July 30, 2014, to consider approval of the Cash Collateral Motion on a final basis.

- B. Wages, Salaries, Commissions, and Related Taxes and Employee Benefits, and Authorizing and Directing Bank to Honor Employee and Independent Contractor Wage, Salary, and Commission Checks (ECF Doc. No. 6):

- The Bankruptcy Court approved the motion on a final basis on July 3, 2014 (ECF Doc. No. 89). The motion sought authority to pay certain pre-petition wages, salaries, commissions, and related benefits due to the Debtor's

employees (collectively, the “**Wages**”). The Debtor sought this relief out of concern that, if the Wages were not paid on a timely basis, the Debtor’s employees might refuse to work. None of the Wages were greater than the statutory limit of \$12,475.00 as provided under Bankruptcy Code §507.

C. Motion for Order Pursuant to 11 U.S.C. Sections 105(a), 345(b), and 363(c) Authorizing Debtor to (I) Continue Use of Existing Cash Management System, and (II) Maintain Existing Accounts and Business Forms, and Granting Related Relief (ECF Doc. No. 8).

- The Bankruptcy Court approved the motion on a final basis on July 3, 2014 (ECF Doc. No. 90). The motion sought authority to continue the use of the Debtor’s existing business forms and the Debtor’s bank accounts.

D. Motion for Order (I) Pursuant to 11 U.S.C. Section 503(b)(1)(A) Granting Administrative Status to Undisputed Claims for Goods-in-Transit as of Petition Date, (II) Authorizing Payment Pursuant to 11 U.S.C. Sections 105(a) and 363(c)(1), and Bankruptcy Rule 6004 of Foreign Suppliers’ Administrative Claims, Prepetition Freight Forwarding Charges, Customs Brokers Fees, and Common Carrier Charges (ECF Doc. No. 9).

- The Bankruptcy Court approved the motion on a final basis on July 3, 2014 (ECF Doc. No. 91). The motion sought authority for the Debtor to pay for (i) goods that it had ordered prior to the Petition date, but had not yet been delivered, (ii) shipping, customs, and carrier charges that are routine in the Debtor’s business; and (iii) certain claims of its foreign suppliers.

E. Debtor’s Motion for Order Authorizing Continuation of Certain Customer Practices (ECF Doc. No. 10).

- The Bankruptcy Court approved the motion on June 13, 2014 (ECF Doc. No. 53). The motion sought authority for the Debtor to continue to honor certain of its customer practices, including rebates, warranties, refunds, returns, and exchanges. The Debtor sought this relief to ensure the continued loyalty of its customers.

F. Motion for Order Pursuant to Bankruptcy Code sections 105(a) and 366 (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Payment, and (III) Establishing Procedures for Determining Adequate Assurance of Payment (ECF Doc. No. 7).

- The Bankruptcy Court approved the motion on June 13, 2014 (ECF Doc. No. 52). The motion sought to prohibit certain of the Debtor’s utilities provides from altering, refusing, or discontinuing service to the Debtor and to establish procedures for those utilities to request deposits from the Debtor as adequate assurance of future payment.

Hearings to Consider Final Orders for First Day Motions

On July 2, 2014, the Bankruptcy Court held a hearing to consider approval of the First Day Motions (with the exception of the Cash Collateral Motion, the Customer Practices Motion, and the Utilities Motion) on a final basis. Subsequent to the hearing, the Bankruptcy Court entered Final Orders for the (a) Wage Motion, (b) Freight Forwarding Motion, and (c) Bank Account Motion, and entered a Second Interim Order approving the Cash Collateral Motion.

No Creditors' Committee Appointed

The United States Trustee made the determination not to appoint a creditors' committee in the Chapter 11 Case pursuant to Bankruptcy Code §1102.

Other Key Orders Granted During the Chapter 11 Case

In addition to the First Day Orders, the Bankruptcy Court has entered the following additional orders:

- By Order dated June 25, 2014 (ECF Doc. No. 68), the Bankruptcy Court set August 5, 2014 as the last date for creditors to file claims against the Debtor that arose prior to the Petition Date. The last date for governmental entities to file claims is December 3, 2014. The Debtor has requested a supplemental bar date for holders of Class 4 Claims that have opted out of the Class Action.
- On July 16, 2014, the Bankruptcy Court denied the motions filed by the plaintiffs in the Class Action for an order dismissing the Chapter 11 Case, or alternatively to lift the automatic stay to permit the Class Action to proceed to trial in the District Court.
- On July 16, 2014, the Bankruptcy Court denied the Debtor's motion for an order enforcing the automatic stay and for an order determining that the claims set forth in Ebin II are property of the Debtor's bankruptcy estate. In addition, the Bankruptcy Court denied the Debtor's motion seeking sanctions against the plaintiffs in the Class Action for violation of the automatic stay.

Potential Claims of the Debtor

The Debtor will have the opportunity to pursue Avoidance Actions under the Bankruptcy Code if it chooses to do so. The Debtor might be entitled to recover certain transfers of property made prior to the filing of its Chapter 11 Case for the benefit of the Estate. Lawsuits to recover these transfers are defined in this Plan as the "Avoidance Actions." Presently, the Debtor does not intend to pursue recovery of Avoidance Actions because the Debtor believes that (a) the aggregate amount of the recoverable transfers is relatively small, (b) the Debtor does not want to take positions which would be adverse to its ongoing vendors and suppliers, and (c) the legal fees and costs associated with pursuing Avoidance Actions would not justify the possible benefits.

Postpetition Business Operations

Since the Petition Date, the Debtor has been operating its business in accordance with the budget established by the Debtor, and approved by Citibank in connection with the Cash Collateral Order. Since the Petition Date, the Debtor's sales and expenses have been within the permitted variances permitted in the Cash Collateral Order. For the year ending December 31, 2013, the Debtor lost approximately \$4,447,018.00 million. In 2014, the Debtor projects it will have losses of approximately \$739,000.00, mainly due to reorganization and restructuring costs, including professional fees.

V. SUMMARY OF PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND INTERESTS

Below is a summary of the Plan. Parties in interest are urged to review the Plan in its entirety to determine how the Plan affects their rights as Creditors or Interest holders.

The Plan provides for the reorganization of the Debtor by the: (i) estimation of the Class Claim for voting and distribution purposes by the Bankruptcy Court; (ii) use of the Effective Date Payment to pay in full all Administrative Expenses on the Effective Date; (iii) the extent that any portion of the Effective date Payment is remaining after payment in full of all Allowed Administrative Claims, then the Debtor will fund the GUC Fund and the Class Action Fund in accordance with the Plan; (iv) payment of quarterly payments of up to \$200,000.00 per quarter payable from the Debtor's cash flow for a period of up to two (2) years after the Effective Date; and (iv) to the extent necessary, the contribution of new funds into the Debtor through the Kangadis Contribution in the amount of \$500,000.00 on the Effective Date, and another \$500,000.00 on the one (1) year anniversary of the Effective Date.

On the Effective Date, the Debtor projects that it will have approximately \$1 million in Cash, and to the extent necessary, \$500,000.000 of the Kangadis Contribution to make the payments required under the Plan. These funds will be sufficient to pay the payments required under the Plan. To the extent necessary to pay Allowed Claims under the Plan, the Debtor will pay from its cash flow an aggregate of \$200,000.00 per quarter, commencing on June 30, 2015, for up to two (2) years, to be used to fund the GUC Fund and the Class Action Fund in accordance with the Plan. The projections annexed hereto as **Exhibit C** demonstrate that the Debtor's business operations will support the payments required by the Plan.

The Kangadis Contribution is being made to satisfy the requirements to confirm the Plan under Bankruptcy Code section 1129. If Class 4 and 5 Claims are not paid in full, then the Kangadis Contribution represents the "new value" contribution required by the Bankruptcy Code in order for T. Kangadis to receive the issuance of the 100% of the stock of the Reorganized Debtor. In addition, because the Debtor currently has the exclusive right to file a chapter 11 plan, the Debtor must provide an opportunity for third parties to offer greater consideration than the consideration being offered by the Kangadis Contribution in exchange for receiving issuance of the 100% stock interest in the Reorganized Debtor. For purposes of evaluating competing offers for that stock interest, the Kangadis Contribution will be considered to have a value of \$1 million based on the fact that (i) up to \$900,000.00 in Cash will be contributed to the Debtor, (ii) the Kangadis Guaranties will continue to be maintained, and (iii) the payment of the Affiliate Claims will be subordinated in right of payment to the payment of Allowed Class 4 and 5 Claims.

Any Person interested in making an offer to purchase the 100% stock interest in the Reorganized Debtor shall (a) at least fifteen (15) days prior to the Confirmation Hearing, deliver a written offer to purchase the 100% stock interest in the Reorganized Debtor with a present value of at least \$1,000,000.00 to SilvermanAcampora, (b) deliver a Cash deposit of at least \$100,000.00 in

certified funds, or by wire transfer, to SilvermanAcampora, and (c) provide SilvermanAcampora with written evidence that the offeror has sufficient Cash, or a written loan commitment from a reputable and insured financial institution, in an amount sufficient to satisfy the Citibank Secured Claim in full, including all accrued interest and attorneys' fees.

Prior to the Confirmation Hearing, the Debtor will consider any valid offers made pursuant to the above requirements to purchase the 100% stock interest in the Reorganized Debtor. If the Debtor determines that a valid offer is made for the stock of the Reorganized Debtor, then the Debtor will hold an auction of the stock interest at the Confirmation Hearing to determine the highest and best offer. If no competing offer is made in accordance with the above procedures, then the Kangadis Contribution will be considered to be a sufficient and adequate "new value" contribution.

The Debtor believes that the treatment of Creditors under the Plan provides creditors with substantially greater value compared to what they would receive in liquidation under chapter 7 of the Bankruptcy Code. The Debtor has prepared a liquidation analysis which is annexed hereto as **Exhibit B**.

Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Plan. Holders of these claims may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. As such, the Debtor has *not* placed the following claims in any class:

Statutory Fees

Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) ("**U.S. Trustee Fees**"). U.S. Trustee Fees will accrue and be timely paid until the Case is closed. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan. The Debtor shall remain responsible for any and all U.S. Trustee Fees that become due and shall pay same on a timely basis.

The following chart lists the Debtor's estimated U.S. Trustee Fees and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
U.S. Trustee Fees	\$20,000	Paid in full in Cash on the Effective Date of the Plan.

Administrative Expenses

Administrative Expenses are costs or expenses of administering the Debtor's Chapter 11 Case which are allowed under Bankruptcy Code §503. Administrative Expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within twenty

(20) days prior to the Petition Date. The Bankruptcy Code requires that all Administrative Expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$10,000	To the extent not paid in the ordinary course pursuant to the budget attached to the Cash Collateral Order, they will be paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtor.
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$2,000	Paid as soon as reasonably practicable after the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtor.
Professional Fees, as approved by the Bankruptcy Court.	\$800,000	Paid in full on the Effective Date, in Cash, upon such other terms as may be agreed upon by the holder of the Claim and the Debtor, or according to Bankruptcy Court order if such fees have not been approved by the Bankruptcy Court on the Effective Date of the Plan.
Clerk's Office Fees	\$0	Paid in full on the Effective Date.
Other administrative expenses	\$10,000	Paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtor.
TOTAL	\$822,000	

Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by Bankruptcy Code §507(a)(8). Unless the holder of such a section 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, on the Effective Date or in regular installments paid over a period not exceeding five (5) years from the Petition Date, plus interest at the prime rate of interest as published by the Wall Street Journal, or similar publication.

The following chart lists the Debtor's estimated section 507(a)(8) priority tax claims and their proposed treatment under the Plan:

<u>Description (name and type of tax)</u>	<u>Estimated Amount Owed</u>	<u>Date of Assessment</u>	<u>Treatment</u>
Tax Claims (estimated)	\$0		Paid over a five (5) year period pursuant to Bankruptcy Code §1129(a)(C)(ii), at the prime rate of interest.
Total:	\$0	13	AROSN/1554057.5/063637

Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Bankruptcy Code §507(a) are required to be placed in classes. The Bankruptcy Code requires that each holder of a priority claim receive Cash on the Effective Date of the Plan equal to the allowed amount of such claim; however, a class of holders of such claims may vote to accept different treatment.

The Debtor proposes to pay priority unsecured claims over a twelve (12) month period following the Effective Date, without interest, which amounts may be pre-paid by the Debtor.

<u>Class #</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
1	Priority Non-Tax Claims \$0	Impaired	Paid in full within 12 months after the Effective Date, without interest.

Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under Bankruptcy Code §506. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be treated as a General Unsecured Claim.

<u>Class #</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
2	Citibank Secured Claim in the amount of approximately \$2.8 million	Impaired	Paid in full, in Cash, on or before 30 days after the Effective Date through an exit facility from Citibank, or within 90 days after the Effective Date utilizing the proceeds of a loan from a new lender.
3	Other Secured Claims (estimated to be \$0)	Unimpaired	Paid in full in Cash on the Effective Date, or claimants will retain their liens against the Debtor's assets, and receive deferred Cash payments totaling the Allowed amount of their claims (with a value as of the Effective Date of the holder's Allowed Claims).

Classes of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under Bankruptcy Codes §507(a).

The following chart identifies the Plan's proposed treatment of Classes 4, 5 and 6, which contain Class Claims, General Unsecured Claims, including Affiliate Claims against the Debtor:

Class #	Description	Impairment	Treatment
4	Class Claims (to be estimated by the Bankruptcy Court)	Impaired	<p>The holders of Allowed Class 4 Claims shall receive, in full satisfaction of their Allowed Claims, Distributions from the Class Representative of the Cash and other payments to be deposited into the Class Action Fund.</p> <p>Until the Class Claim is estimated, the Debtor cannot estimate the percentage recovery to be received by holders of Allowed Class 4 Claims. The Debtor estimates that holders of Class 4 Claims will receive the recoveries set forth in the chart annexed hereto as Exhibit D. The holders of Class 4 Claims are impaired, and are entitled to vote on the Plan.</p>
5	General Unsecured Claims (approximately \$400,000)	Impaired	<p>Each holder of an Allowed Class 5 General Unsecured Claim shall receive their Pro Rata Share of the Cash and other payments to be deposited into the GUC Fund in full satisfaction of their Allowed Claims. The Debtor estimates that the Holders of Allowed Class 5 Claims will receive the recoveries set forth in the chart annexed hereto as Exhibit D. The holders of Class 5 General Unsecured Claims are impaired, and are entitled to vote on the Plan.</p>
6	Affiliate Claims (amount unknown)	Impaired	<p>The holders of Class 6 Claims are T. Kangadis, Aristidis Kangadis, Andromahi Kangadis, and KFM. The Allowed Class 6 Claims shall be subordinated solely in right of payment, but not the right of setoff or any defenses, to the Distributions to holders of Class 4 and 5 Claims. Holders of Allowed Class 6 Claims shall not receive any Distributions under the Plan. After the Distributions to Class 4 and 5 claimants are completed, the Reorganized Debtor shall be permitted to pay the subordinated Class 6 Claims.</p>

Class 7 Interest Holders

Interest holders are Persons which hold an ownership interest in the Debtor. The Interests in the Debtor are held by T. Kangadis, Aristidis Kangadis, and Andromahi Kangadis. As of the Effective Date, all Interests in the Debtor will be cancelled and extinguished. In consideration for the Kangadis Contribution, T. Kangadis will receive 100% of the new stock issued in the Reorganized Debtor. Except for T. Kangadis, no Class 7 Interest Holder shall receive any Cash or property under the Plan. Holders of Class 7 Interests are not entitled to vote on the Plan, and are deemed to have rejected the Plan.

Claims and Interests Not Impaired Under the Plan

The term "impaired" as used below shall have the same meaning as it has pursuant to Bankruptcy Code §1124. Holders of Administrative Expenses, Priority Tax Claims, and Class 3 (Other Secured Claims) are not impaired and shall be paid in full, on the Effective Date.

Class 3 is not impaired under the Plan and, therefore, Class 3 is deemed to accept the Plan.

Claims and Interests Impaired Under the Plan

Claims in Classes 1, 2, 4, 5 and 6, and Class 7 Interests, are impaired under the Plan. The holders of Claims in Classes 1, 2, 4, 5, and 6 are entitled to vote on the Plan. Class 3 is not impaired and shall be deemed to have accepted the Plan. Class 7 is deemed to reject the Plan.

VI. MEANS FOR IMPLEMENTATION OF THE PLAN

No later than two (2) business days before the Effective Date, (i) the Debtor shall deposit into a separate account the Effective Date Payment consisting of approximately \$1,082,000.00, and (ii) if Allowed Class 4 and Class 5 Claims will not be paid in full, with interest, then \$500,000.00 of the Kangadis Contribution shall be paid to the Debtor. In addition, as soon as practical after the Effective Date, KFM shall repay the Debtor the \$684,573.00 debt that it owes the Debtor. The above Cash and payments will be used by the Debtor to fund the payments required under the Plan.

On the Effective Date, the Debtor will have sufficient Cash to pay in full the following amounts required to be paid under the Plan:

- U.S. Trustee's fees and any applicable interest;
- Allowed Priority Tax Claims and Priority (Non-Tax) Claims; and
- Allowed Administrative Expenses, including Fee Claims (except to the extent that the holders of Administrative Expenses or Fee Claims agree to different treatment).

Fee Claims do not include the claims for attorneys' fees and costs which might be asserted by Bursor & Fisher.

In addition, to the extent necessary to make the payments required under the Plan, beginning on June 30, 2015, the Debtor will pay from the cash flow generated from its operations an aggregate of \$200,000.000 per quarter for up to two (2) years to fund the GUC Fund and the Class Action Fund in accordance with the Plan. The Debtor's unaudited financial projections indicate that the Debtor will have the ability to timely make all of the payments required under the Plan. (The Debtor's projections are annexed hereto as **Exhibit C**).

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter as is reasonably practicable, the Debtor or the Reorganized Debtor shall use available Cash to pay in full, or establish appropriate reserves for Allowed Administrative Expenses, including Fee Claims, except as otherwise agreed to by the holder thereof and the Debtor. The Debtor or the Reorganized Debtor shall not be required to establish reserves with respect to the Class Claim, or any attorneys' fee claim of Bursor & Fisher.

The Reorganized Debtor shall pay all Priority Tax Claims and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

Article V of the Plan sets forth the means for implementing the Plan and the method for making Distributions under the Plan. As set forth in Articles III and V of the Plan, the Class Administrator shall make all Distributions to holders of Class 4 Claims under the Plan.

Quarterly Reports. Until the Chapter 11 Case is closed the Debtor shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 5 Claims, and (b) the status of any Avoidance Actions. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Debtor shall maintain an accurate register of the Class 5 Claims.

Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§1141(b) and (c), all property and assets of the Debtor, except for the GUC Fund and the Class Action Fund, shall be transferred to and shall vest in the Reorganized Debtor free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

Continuing Existence. From and after the Effective Date, the Reorganized Debtor will continue in existence and shall continue normal operations of its business as a corporation under the applicable laws of the state of New York.

Post-Consummation Implementation. On the Effective Date, all relevant parties (including the Debtor, the Reorganized Debtor, and Citibank – any new lender that refinances Citibank's loan) will take all actions necessary to cause title to the Debtor's assets to be transferred to the Reorganized Debtor, and for the termination of any security interests, or Uniform Commercial Code filings, after the payment in full of any secured claims. Promptly after substantial consummation of the Plan, the Debtor shall file the Closing Report in accordance with Local Bankruptcy Rule 3022-1, within the deadlines set forth therein, and an application for a Final Decree.

Professionals. The Reorganized Debtor may retain and compensate professionals, including professionals who have been or are currently retained as Estate professionals without approval from the Bankruptcy Court.

VII. EXECUTORY CONTRACTS AND LEASES

Any executory contract or unexpired lease of the Debtor which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtor on the Effective Date.

Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the date of the order rejecting the executory contract or unexpired lease, and shall have the same rights as a Class 5 Claimant to the extent such Claim becomes an Allowed General Unsecured Claim.

VIII. PROCEDURE FOR RESOLVING DISPUTED CLAIMS

Article VII of the Plan sets forth the procedures for resolving Disputed Claims under the Plan, including the establishment of Disputed Claims Reserves for certain Disputed Claims.

IX. RETENTION OF JURISDICTION

The Bankruptcy Court shall retain jurisdiction over the Debtor and the Chapter 11 Case pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

- a. to enable the Debtor or the Reorganized Debtor, as applicable, to prosecute the Avoidance Actions;
- b. to hear and determine all Avoidance Actions, any claim or cause of action belonging to the Debtor's estate, and any disputes concerning the classification, allowance, or estimation of any Claim;
- c. to resolve any disputes concerning any funds held in the Disputed Claims Reserve;
- d. to hear and determine all disputed issues relating to a security or ownership interest in any property of the Debtor's Estate or in any proceeds thereof;
- e. to hear and determine all Claims arising out of any agreement entered into by the Debtor after the Petition Date;
- f. to recover all assets and property of the Debtor wherever located;
- g. to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;
- h. to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142 or in Bankruptcy Rules 1019 and 3020(d);
- i. to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, including the fees and expenses of Bursor & Fisher, and thereafter to hear and determine any objections to compensation of professionals;
- j. to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;
- k. to hear and determine any disputed issues with respect to the payments to be made under the Plan;
- l. to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;
- m. to enter a Final Order or decree concluding the Debtor's Chapter 11 Case; and
- n. to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

X. CONFIRMATION AND EFFECTIVE DATE

Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan:

- a. The Effective Date Payment, and to the extent required by the Plan, a portion of the Kangadis Contribution, shall be deposited by the Debtor into a separate account;

- b. All terms, conditions and provisions of the Plan are approved in the Confirmation Order;
- c. The proposed Confirmation Order shall be in form and substance acceptable to the Debtor, and the U.S. Trustee; and
- d. The Debtor shall have sufficient Cash, including use of the Kangadis Contribution, to pay in full all Allowed Administrative Expenses, including Fee Claims (except to the extent that holders of Allowed Fee Claims agree to different treatment of their claims), all Allowed Priority Claims, and U.S. Trustee fees, but excluding Allowed Administrative Expenses under Bankruptcy Code §503(b)(9), which shall be paid as soon as reasonably practicable after the Effective Date, or upon such other terms as may be agreed to by the holder thereof and the Debtor.

The conditions precedent set forth in subparagraphs (a), (b), (c) and (d) above, may be waived by the Debtor in its sole discretion, upon reasonable notice to the U.S. Trustee.

Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

- a. The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and
- b. The Debtor shall have utilized the Effective Date Payment to pay Allowed Administrative Claims in full and, to the extent that a portion of the Effective Date Payment remains, the Debtor will fund the GUC Fund and the Class Action Fund in accordance with the Plan.

XI. DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

Interest Holders of the Debtor. UPON THE EFFECTIVE DATE, NOTWITHSTANDING BANKRUPTCY CODE §1141(d)(1), INTERESTS IN THE DEBTOR SHALL BE EXTINGUISHED, AND SUCH HOLDERS SHALL LOSE ALL RIGHTS UNDER BANKRUPTCY LAW AND NON-BANKRUPTCY LAW WITH RESPECT TO THOSE INTERESTS AS SET FORTH HEREIN. IN ACCORDANCE WITH THE PLAN, IN CONSIDERATION FOR THE KANGADIS CONTRIBUTION, T. KANGADIS SHALL RECEIVE 100% OF THE NEWLY ISSUED STOCK IN THE REORGANIZED DEBTOR. EXCEPT FOR T. KANGADIS, NO CLASS 7 INTEREST HOLDERS SHALL RECEIVE ANY CASH OR PROPERTY UNDER THE PLAN.

Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS, INCLUDING WITHOUT LIMITATION, THE CLASS ACTION MEMBERS AND BURSOR & FISHER, ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, THE DEBTOR'S PROPERTY, OR THE ESTATE BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING RELATED TO THE FACTS ALLEGED IN THE CLASS ACTION AND ANY CLAIMS THAT ARE PROPERTY OF THE DEBTOR'S BANKRUPTCY ESTATE (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTOR, OR ANY

OF THE DEBTOR'S OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTOR'S PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

Release by the Debtor. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTOR SHALL RELEASE UNCONDITIONALLY, AND HEREBY IS DEEMED TO FOREVER RELEASE UNCONDITIONALLY: (A) CITIBANK AND ITS DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS; (B) THE DEBTOR'S ADVISORS INCLUDING ATTORNEYS, SPECIAL COUNSEL, ACCOUNTANTS, AND FINANCIAL ADVISORS; AND (C) T. KANGADIS, ARISTIDIS KANGADIS, ANDROMAHI KANGADIS, AND KFM (COLLECTIVELY, THE "RELEASED PARTIES"), FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, INCLUDING SPECIAL COUNSEL, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASE IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

THE DEBTOR AND THE REORGANIZED DEBTOR RESERVE ALL OF THEIR RIGHTS AGAINST THE HOLDERS OF THE CLASS CLAIM, AND BURSOR & FISHER, TO SEEK DAMAGES, ATTORNEYS' FEES, COSTS, AND SANCTIONS FOR ANY VIOLATION OF THE INJUNCTION, EXCULPATION, OR RELEASE PROVISIONS UNDER THE PLAN, AND FOR VIOLATION OF THE AUTOMATIC STAY. IN ADDITION, THE DEBTOR AND THE REORGANIZED DEBTOR RESERVE THEIR RIGHTS TO SEEK TO EQUITABLY SUBORDINATE THE CLASS CLAIM AND TO OBJECT TO ANY FEE REQUEST MADE BY BURSOR & FISHER.

EXCEPT FOR THE RELEASED CLAIMS, NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTOR OR THE CHAPTER 11 CASE. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS, OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTOR; (II) ANY OF THE DEBTOR'S SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTOR TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTOR OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAIN IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

Persons or Entities Not Released by the Debtor. Except for the releases contained in the Plan and the Confirmation Order, the Debtor and the Estate are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

Justification for Releases of Non-Debtor Parties.

The Debtor believes that it is appropriate under the circumstances of the Chapter 11 Case for the Plan to provide the Released Parties with the releases and exculpations provided for in the Plan because the Released Parties each provided significant contributions during the Chapter 11 Case and those contributions were integral to the development and consummation of the Plan. In addition, the Debtor believes that it holds no valuable claims against the Released Parties.

With respect to the releases granted to Citibank under the Plan, the Debtor believes that granting such releases is a reasonable exercise of business judgment in light of Citibank's agreements in connection with the Cash Collateral Order.

The releases provided to the Released Parties are reasonable and justifiable under the circumstances in light of the fact that: (i) the Released Parties are providing substantial value to creditors under the Plan, including the new value contribution represented by the Kangadis Contribution; (ii) in many instances, claims against the Released Parties will result in claims against the Debtor for indemnification; (iii) the Debtor's reorganization under the Plan is impossible without providing the releases to the Released Parties. Certain of the Released Parties have filed indemnification claims against the Debtor's estate in unliquidated amounts; and (iv) the Debtor does not believe that it has any valuable or viable claims against the Released Parties.

Justification for Settlement of Veil Piercing Claims

Generally, alter-ego or veil piercing claims (collectively, "**Veil Piercing Claims**") allege that defendants should be derivatively liable to creditors of a debtor for their actions because, under the circumstances, the corporate separateness of a corporation should be disregarded. If Veil Piercing Claims are successful, the defendants would be liable for the debts of the Debtor.

As part of the Plan, the Debtor intends to settle Veil Piercing Claims which are property of the Debtor's estate, including without limitation any claims set forth in the Ebin II Action which are property of the Debtor's estate. The consideration to be paid by the Released Parties for settling the Veil Piercing Claims against the Released Parties is \$100,000.00. For the reasons set forth below, the Debtor believes that this is a fair settlement because the Veil Piercing Claims are without merit. The Debtor further believes that it would be very difficult to prevail in prosecuting Veil Piercing Claims. The plaintiffs in the Ebin II Action disagree and believe that a settlement of all Veil Piercing Claims for \$100,000.00 is an inadequate settlement amount.

To be clear, the \$100,000.00 settlement payment will be paid to the Debtor whether or not the Kangadis Contribution is made. Thus, if holders of Allowed Class 4 and 5 Claims are paid in full and the Kangadis Contribution is not necessary, the \$100,000.00 settlement payment will still be paid to the Debtor.

As stated above, the plaintiffs who filed the Ebin II Action have alleged certain claims against the defendants in the Ebin II Action. The Released Parties are defendants in the Ebin II Action. To the extent that those plaintiffs have independent standing to assert their own claims against the Released Parties that have not already been dismissed, then the plaintiffs in the Ebin II Action retain the right to pursue those claims, and the releases in the Plan do not affect those potential claims.

Under New York state law, imposing Veil Piercing Claims is an extraordinary remedy. It will only be imposed upon a showing: (a) of complete domination of the corporation in respect to the transaction attacked; and (b) that the domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury.

The Debtor believes that the Veil Piercing Claims do not satisfy the above legal requirements. The Debtor believes that its shareholders and officers did not completely dominate the corporation, that typical corporate formalities for a closely-held corporation were followed, including separate books and records, and that the shareholders and officers did not use the Debtor to commit a fraud or wrong against any person or entity.

In addition, the Debtor believes that the defendants in the Ebin II Action will assert claims for defense and indemnification against the Debtor under applicable New York state law. Those claims would have to be paid under the Plan, and would decrease the funds available for the payment of Class 4 and Class 5 Claims.

The plaintiffs in the Ebin II Action disagree and believe that the Veil Piercing Claims are valid claims which might result in liability. In order to conduct a trial of the Veil Piercing Claims, a significant amount of attorneys' fees and costs would need to be expended. Based on the legal fees, other costs, and the delay and risk associated with litigation of the Veil Piercing Claims, the Debtor has made the business decision to settle the Veil Piercing Claims for \$100,000.00. The Debtor believes that the settlement of the Veil Piercing Claims for \$100,000.00 is a fair compromise under the circumstances, and should be approved by the Court in connection with confirmation of the Plan. The Debtor believes that settlement of the Veil Piercing Claims conforms to the reasonableness standards governing settlements set forth in Bankruptcy Ruled 9019.

XII. MISCELLANEOUS PROVISIONS

Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

If to the Debtor:

SilvermanAcampora LLP
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753
Attn: Adam L. Rosen
516-479-6300
arosen@silvermanacampora.com

If to Citibank, N.A.:
Rivkin Radler LLP
926 RXR Plaza
Uniondale, New York 11556
Attn: Stuart Gordon
(516) 357-3055
stuart.gordon@rivkin.com

If to the holders of the Class Claim:
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, New York 10019

Attn: Scott A. Bursor
(212) 989-9113
scott@bursor.com

If to the U.S. Trustee:
Office of the U.S. Trustee
Alfonse D'Amato Courthouse
560 Federal Plaza
P.O. Box 9013
Central Islip, New York 11722
Attn: Stan Y. Yang
stan.y.yang@usjo.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Bankruptcy Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtor with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

- a. Change of Address. Any of the parties identified in Section 12.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtor.
- b. Modification of the Plan. The Debtor reserves the right, in accordance with the Bankruptcy Code, upon reasonable notice to Citibank, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Reorganized Debtor may, upon appropriate motion and order of the Bankruptcy Court, and after giving notice to counsel to Citibank, and the U.S. Trustee, in accordance with Bankruptcy Code §1127(b), remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.
- c. Reservation of Rights. Nothing contained herein shall prohibit the Debtor or the Reorganized Debtor from prosecuting or defending any of the rights of the Debtor's Estate, including without limitation, the Avoidance Actions.
- d. Payment Dates. If payments or Distributions are due to be made under the Plan on a day other than a Business Day, such payment or Distribution shall instead be made, without interest, on the first (1st) Business Day immediately following the due date. Payment shall be considered timely upon issuance of the check representing the payment, not the day it is received.
- e. Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.
- f. Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.
- g. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.
- h. Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

XIII. ALTERNATIVES TO THE PLAN

Liquidation Analysis and Valuation

The Debtor and its professionals have carefully considered alternatives to the Plan. The alternatives considered were the sale of the Debtor's assets as a "going concern" and the liquidation of the Debtor's assets. After considering these alternatives, including the Liquidation Analysis, the Debtor determined that the Plan provides creditors with greater recoveries than they would receive in the event of a sale of the Debtor's business or assets, or a liquidation of the Debtor's assets.

The Debtor's financial advisor, Weiser, assisted in the preparation of the Liquidation Analysis and the Projections, and estimated the value of the Reorganized Debtor on or around the Effective Date. According to the valuation of the Debtor prepared by Weiser, the Kangadis Contribution is a sufficient new value contribution. The Debtor believes that the total consideration offered to Creditors under the Plan is more than Creditors would receive in a liquidation under chapter 7 of the Bankruptcy Code. In addition, the Debtor believes that the Kangadis Contribution has a value which is fair relative to the value of the Debtor, and that no other party would likely offer more for the stock in the Reorganized Debtor.

Kangadis Contribution

The Kangadis Contribution consists of the following payments and other consideration provided as a new value contribution in exchange for the receipt of 100% of the stock in the Reorganized Debtor by T. Kangadis as follows: (i) \$500,000.00 in Cash paid on the Effective Date; (ii) to the extent necessary, \$400,000.00 in Cash paid on the first anniversary of the Effective Date; (iii) the continued maintenance of the Kangadis Guaranties after the Confirmation Date in favor of Citibank, or the lender which refinances Citibank's debt; and (iv) the subordination in right of payment of the Affiliate Claims. Thus, the total cash value of the Kangadis Contribution has a value of at least \$1 million.

The Kangadis Contribution is a "new value" contribution which is required when an existing stockholder seeks to acquire the stock interests in a chapter 11 debtor after the debtor emerges from its chapter 11 case, and where creditors are being paid in full. Bankruptcy law requires that the "new value" contribution must be a significant payment of new money, or money's worth, that is necessary for the reorganization and fair in relation to the estimated value of the debtor on the date the debtor emerges from chapter 11.

The Debtor believes that the Kangadis Contribution is legally sufficient to satisfy the "new value" requirements, as well as the other applicable standards for confirmation of the Plan under Bankruptcy Code §1129. The Class Plaintiffs disagree with this view.

Possible Auction of the Stock in the Reorganized Debtor

Applicable bankruptcy law requires that, because the exclusive periods for the Debtor to file and confirm a plan of reorganization have not expired, and because the Debtor's shareholder seeks to acquire the stock of the Reorganized Debtor, the Debtor is required to explore whether a third party might pay more than the Kangadis Contribution for the opportunity to purchase the stock in the Reorganized Debtor. To this end, the Debtor considered whether the stock in the Reorganized Debtor should be subject to a potential auction in order to expose that stock interest to sufficient

market forces. A potential auction may help determine whether a potential bidder would offer greater consideration to acquire the newly issued stock in the Reorganized Debtor compared to, and under similar terms and conditions, as the Kangadis Contribution under the Plan.

The Plan provides that any Person interested in making an offer to purchase 100% of the stock of the Reorganized Debtor shall (a) at least fifteen (15) days prior to the Confirmation Hearing, deliver a written offer with a present value of at least \$1,000,000.00 to SilvermanAcampora, (b) deliver a Cash deposit of at least \$100,000.00 in certified funds, or by wire transfer, to SilvermanAcampora, and (c) provide SilvermanAcampora with written evidence that the offeror has sufficient Cash, or a written loan commitment from a reputable and insured financial institution in an amount sufficient, to satisfy the Citibank Secured Claim in full.

Prior to the Confirmation Hearing, the Debtor will consider any valid offers made pursuant to the above requirements to purchase 100% of the stock interests in the Reorganized Debtor. If no competing offer is made in accordance with the above procedures, then the Kangadis Contribution will be considered to be a sufficient and adequate "new value" contribution for purposes of confirming the Plan.

In light of the conclusions reached by Weiser regarding valuation, the Debtor believes that the value of the Kangadis Contribution is substantially more than any third party would offer for the stock in the Reorganized Debtor. There are several reasons why it is unlikely that a third party would make an offer that would exceed the value of the Kangadis Contribution.

First, any potential purchaser of the stock in the Reorganized Debtor would be concerned that the officers of the Debtor are not subject to employment agreements, or non-compete agreements. Thus, if a third party purchased the stock of the Reorganized Debtor, there is no assurance that T. Kangadis, and other officers would continue working at the Debtor. Moreover, there is a chance that T. Kangadis, or other officers, might leave the Debtor and start a new company, or work for a competitor of the Debtor and bring with them their relationships with vendors, suppliers and customers developed over the past 11 years which are integral to the Debtor's continued operations.

Second, any potential purchaser of the stock of the Reorganized Debtor would need to satisfy Citibank's secured claim of \$2.8 million, plus any accrued interest and attorneys' fees owed under the Loan Documents. In addition, to the extent that a potential purchaser needs financing to operate the business of the Reorganized Debtor, the buyer would have to obtain appropriate financing going forward.

Third, the Debtor's business is volatile in nature and is subject to adverse changes including the possibility that customers might decide to stop buying the Debtor's products, vendors might decide not to ship products to the Debtor, or refuse to offer payment terms on products shipped.

Liquidation Under Chapter 7 of the Bankruptcy Code

If the Plan is not confirmed under Bankruptcy Code § 1129(a), the Debtor may convert this Chapter 11 Case a case under chapter 7 of the Bankruptcy Code, in which case, a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. If a trustee is appointed, the Debtor believes that all Creditors holding Allowed General Unsecured Claims will receive less than they would under the Plan. In the event of liquidation under chapter 7 of the Bankruptcy Code, the Debtor believes that all of the Cash proceeds of such liquidation primarily would be paid to holders of Secured Claims,

and Administrative Expense Claims. In addition, a chapter 7 trustee, who would lack the Debtor's knowledge and relationships, would be less successful than the Debtor in collecting the Debtor's accounts receivable or selling the Debtor's inventory. Moreover, a chapter 7 trustee would be required to invest substantial time and resources to investigate the facts underlying the nature and extent of the Debtor's assets and claims.

The Debtor encourages all creditors to carefully review the Liquidation Analysis annexed hereto as **Exhibit B** to fully understand how General Unsecured Creditors will be treated if the Debtor's assets were liquidated.

Certain Risk Factors

Part of the consideration to be paid to Class 4 and 5 Creditors under the Plan will be paid over a two (2) year period from the cash flow generated from the Debtor's operations. Although the Debtor has developed financial projections which indicate that the Debtor will have the ability to make the payments required under the Plan, the Debtor's financial performance may not meet those projections due to many factors, some of which are outside of the Debtor's control. As a part of each Creditor's analysis of the Plan, they should consider the risk that the Debtor may not meet its financial projections. Creditors are encouraged to review the Debtor's projections attached to the Statement as **Exhibit C**.

In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor believes that such action or inaction, as the case may be, will cause General Unsecured Creditors to receive less than they would ultimately receive under the Plan. The Debtor believes that conversion of this case to chapter 7 will cause the Debtor's estate to incur substantial expenses which will negatively affect potential recoveries for General Unsecured Creditors.

XIV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE DEBTOR AND ITS PROFESSIONALS ARE NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN, WITH RESPECT TO THE DEBTOR, HOLDERS OF CLAIMS OR HOLDERS OF INTERESTS, NOR ARE THEY RENDERING ANY FORM OF LEGAL OPINION OR TAX ADVICE ON SUCH TAX CONSEQUENCES. THE TAX LAWS APPLICABLE TO CORPORATIONS OR LIMITED LIABILITY COMPANIES IN BANKRUPTCY ARE EXTREMELY COMPLEX, AND HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING TAX CONSEQUENCES OF THE PLAN, INCLUDING FEDERAL, FOREIGN, STATE AND LOCAL TAX CONSEQUENCES.

XV. VOTING PROCEDURES AND REQUIREMENTS

Ballots and Voting Deadline

IT IS IMPORTANT THAT THE HOLDERS OF CLAIMS IN CLASSES 1, 2, 4, 5, and 6 TIMELY EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN. Holders of Class 1, 2, 4, 5, and 6 Claims have been sent a Ballot together with this Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Statement.

SilvermanAcampora shall serve as voting agent (the "**Voting Agent**") to assist in the transmission of voting materials and in the tabulation of votes with respect to the Plan. FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW BEFORE THE VOTING DEADLINE OF **4:00 P.M.** ON _____, **2014**.

IF A BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW. ANY BALLOT THAT IS EXECUTED AND RETURNED BUT WHICH DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT THE VOTING AGENT AT:

SilvermanAcampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Attn: Sheryl P. Giugliano

Additional copies of this Statement are available upon request made to the Voting Agent.

Holders of Claims Entitled to Vote

Classes 1, 2, 4, 5, and 6 are the only classes of Claims under the Plan that are impaired and entitled to vote to accept or reject the Plan. All holders of Classes 2, 3, 5, and 6 Claims should complete the enclosed Ballot and return it to the Voting Agent so that it is received by the Voting Agent before the Voting Deadline.

Withdrawal of Ballots

Any voter that has delivered a valid Ballot may withdraw its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline. To be valid, the notice of withdrawal must (i) be signed by the party who signed the Ballot to be revoked, and (ii) be received by the Voting Agent before the Voting Deadline. The Debtor may contest the validity of any withdrawals.

Any holder that has delivered a valid Ballot may change its vote by delivering to the Voting Agent a properly completed subsequent Ballot so as to be received before the Voting Deadline. In the case where more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date will be counted.

Presumed Rejections of Plan and Cram-Down

For purposes of voting on the Plan, if any Class of Creditors votes to reject the Plan, then the Debtor will utilize the provisions of Bankruptcy Code §1129(b) to satisfy the requirements for confirmation of the Plan over the presumed rejections of such Class.

XVI. CONFIRMATION OF THE PLAN

The Bankruptcy Court will confirm the Plan only if all of the requirements of Bankruptcy Code §1129 are met.

Acceptance of the Plan

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class cast their Ballots in favor of acceptance. A vote may be disregarded if the Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

Best Interests Test and Liquidation Analysis

The Bankruptcy Code provides that the Plan will not be confirmed, regardless of whether or not anyone objects to confirmation, unless the Bankruptcy Court finds that the Plan is in the “best interests” of all Classes of Claims which are impaired. The “best interests” test will be satisfied by a finding of the Bankruptcy Court that either (i) all holders of impaired Claims have accepted the Plan, or (ii) the Plan will provide such a holder that has not accepted the Plan with a recovery at least equal in value to the recovery such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

The starting point in determining whether the Plan meets the “best interests” test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor’s assets in the context of a chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 Case and allowed under chapter 7 of the Bankruptcy Code (such as professionals’ fees and expenses), a trustee’s fees, and the fees and expenses of professionals retained by a trustee. The potential chapter 7 liquidation distribution in respect of each Class must be further reduced by costs imposed by the delay caused by conversion to chapter 7.

The attached Liquidation Analysis demonstrates that General Unsecured Creditors would receive less in a chapter 7 liquidation compared to the Distributions contemplated by the Plan.

For the reasons set forth above, the Debtor urges Creditors to vote in favor of the Plan because each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Feasibility of the Plan

Bankruptcy Code §1129(a)(11) provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the Debtor. The Debtor anticipates that it will have sufficient Cash on hand on the Effective Date to fund the Effective Date Payment and make the payments required to be made on the Effective Date under the Plan. In addition, to the extent necessary, on the Effective Date, T. Kangadis will deliver \$500,000.00 of the Kangadis Contribution to the Debtor. The Kangadis Contribution will only be paid in the event that Allowed Class 4 and 5 Claims are not paid in full.

In addition, depending on the amount of the Allowed Class Claim, the Plan may require the Debtor to make certain payments to Creditors over a two (2) year period following the Effective Date. The projections attached hereto as **Exhibit C** indicate that the Debtor can successfully make the payments required to Creditors under the Plan.

For these reasons, the Debtor believes that the Bankruptcy Court will find that the Plan is feasible. In addition, the Debtor will have sufficient funds to meet all post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case. The Debtor believes that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code because the Debtor will have the Cash necessary to make all the payments required under the Plan.

Classification of Claims Under the Plan

The Debtor believes that the Plan meets the classification requirements of the Bankruptcy Code which requires that a plan of reorganization place each claim into a class with other claims that are “substantially similar.” The Plan establishes classes of Claims as required by the Bankruptcy Code and summarized above. Administrative Expense Claims and Priority Tax Claims are not classified.

The Debtor believes that the separate classification of the Class Claim is justifiable because (i) the Class Claim is disputed and unliquidated, (ii) a portion of the Class Claim might include punitive damages or a penalty, (iii) the exact identity of the Class Action Members is presently unknown to the Debtor, (iv) Distributions to holders of the Class Claim will be made by the Class Administrator and might be subject to the fee arrangements between the Class Action representatives and their attorneys, Bursor & Fisher, and (iv) the relationship between the Debtor and the Class Action Members is fundamentally different from the relationship between the Debtor and the holders of Class 5 Claims which are parties who have done business with the Debtor, and in most instances continue to do business with the Debtor.

The separate classification of the Class 4 and 5 Claims does not affect the treatment of those claims. The Plan provides that Allowed Class 4 and 5 Claims will receive similar treatment under the Plan. Because the Debtor does not know the number of Class Action Members, or how much Bursor & Fisher might receive in legal fees, the Debtor does not know how much the Class Members might receive under the Plan.

In addition, the Debtor believes that the separate classification of the Affiliate Claims is justifiable and consistent with the Bankruptcy Code and other applicable law because the Affiliates who are contributing the Kangadis Contribution have agreed to subordinate, in right of payment, the Affiliate Claims to the Allowed Claims of Class 4 and Class 5 creditors.

Confirmation of the Plan If a Class Does Not Accept the Plan

The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, as long as it is accepted by at least one impaired class of claims. The Plan may be confirmed under the so-called “cram-down” provisions set forth in Bankruptcy Code §1129(b) if, in addition to satisfying the other requirements for confirmation, the Plan is determined to be “fair and equitable” and “does not discriminate unfairly” with respect to each class of Claims that has not accepted the Plan. If the holders of Claims in Classes 1, 2, 4, or 5 vote to reject the Plan, then the Bankruptcy Court may only confirm the Plan if the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such Classes.

Under the Bankruptcy Code, “fair and equitable” has different meanings for secured and unsecured claims. With respect to a secured claim, “fair and equitable” means (i) the impaired secured creditor retains its liens to the extent of its allowed claim and receives deferred cash payments at least equal in value to the allowed amount of its claim with a present value as of the effective date of the plan at least equal in value to such creditor’s interest in the debtor’s interest in the property securing its claim, (ii) if property subject to the lien of the impaired secured creditor is sold free and clear of that lien, the lien attaches to the proceeds of the sale, and such lien proceeds are treated in accordance with clause (i) or (iii) of this paragraph, or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its claim under the plan.

With respect to an unsecured claim, the “fair and equitable” standard, also known as the “absolute priority rule,” requires that a dissenting class receive full compensation for its Allowed Claim before any junior class receives or retains any property under the Plan. If the holders of claims in any impaired class vote to reject the Plan, the Plan may be confirmed under Bankruptcy Code §1129(b) if all holders of Claims junior to those of the impaired class do not receive or retain any property under the Plan.

Under the Plan, if Class 4 and Class 5 creditors are not paid in full, then the absolute priority rule is not being strictly followed because T. Kangadis is receiving 100% of the ownership interests in the Reorganized Debtor while holders of Class 4 and Class 5 Claims are not being paid in full. As discussed above, this is justifiable under applicable law because T. Kangadis is contributing significant “new value” in the form of the Kangadis Contribution.

IF ALL OTHER CONFIRMATION REQUIREMENTS ARE SATISFIED AT THE CONFIRMATION HEARING, THE DEBTOR WILL ASK THE BANKRUPTCY COURT TO RULE THAT THE PLAN MAY BE CONFIRMED ON THE GROUND THAT BANKRUPTCY CODE §1129(b) REQUIREMENTS HAVE BEEN SATISFIED.

Confirmation Hearing

Bankruptcy Code §1128 requires the Bankruptcy Court, after notice, to hold the Confirmation Hearing to consider confirmation of the Plan. Bankruptcy Code §1128(b) provides that any party in interest may object to confirmation of a plan.

By order of the Bankruptcy Court dated _____, 2014, the Confirmation Hearing has been scheduled for _____, **2014** at _____ **.m.** before the Honorable Robert E. Grossman, United States Bankruptcy Court, Alfonse M. D’Amato Federal Courthouse, Courtroom 860, 290 Federal Plaza, Central Islip, NY 11722-9013. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing, or any adjourned hearing. Any objection to confirmation of the Plan must (a) be in writing, (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (c) state with particularity the basis and nature of any objection or proposed modification, and (d) be filed with the Clerk of the Bankruptcy Court, with a copy delivered to chambers, and served so that they are received on or before _____, **2014** at **4:00 p.m.**, upon (i) SilvermanAcampora LLP, Debtor’s attorneys, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: Adam L. Rosen, (ii) Rivkin Radler LLP, attorneys for Citibank, 926 RXR Plaza, Uniondale, New York 11556 (Attn: Stuart Gordon), and (iii) the Office of the United States Trustee, Alfonse D’Amato Federal Courthouse, 560 Federal Plaza, Central Islip, NY 11722, Attn: Stan Yang.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. Unless an objection to confirmation is timely served and filed, it will not be considered by the Bankruptcy Court.

At the Confirmation Hearing, the Bankruptcy Court must determine whether the requirements of Bankruptcy Code §1129 have been satisfied and, upon demonstration of such compliance, the Bankruptcy Court will enter the Confirmation Order.

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XVII. CONCLUSION

This Statement was approved by the Bankruptcy Court pursuant to Bankruptcy Code §1125. The Bankruptcy Court has determined that the Statement contains "adequate information" as that term is defined in Bankruptcy Code §1125(a). The Debtor believes that confirmation of the Plan is preferable to the alternatives described above because it provides the best opportunity for Distributions to General Unsecured Creditors.

Dated: Hauppauge, New York
October 8, 2014

KANGADIS FOOD INC.

By: s/ Themistoklis Kangadis
Name: Themistoklis Kangadis
Title: Chief Executive Officer

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