IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Phoenix Payment Systems, Inc.	)	Case No. 14-11848 (MFW)
Debtor.	)	

DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF PHOENIX PAYMENT SYSTEMS, INC. PROPOSED BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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Dated: December 23, 2014

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE DEBTOR HAS SEPARATELY NOTICED A HEARING TO CONSIDER THE ADEQUACY OF THIS DISCLOSURE STATEMENT UNDER BANKRUPTCY CODE SECTION 1125. THE PLAN PROPONENTS RESERVE THE RIGHT TO MODIFY OR SUPPLEMENT THIS DISCLOSURE STATEMENT AND THE ACCOMPANYING PLAN OF REORGANIZATION UP TO THE DATE OF SUCH HEARING.

DISCLAIMER

This Disclosure Statement describes a plan of reorganization (the "Plan") for Phoenix Payment Systems, Inc. (the "Debtor"). The Debtor and the Committee[1] will ask the Bankruptcy Court to confirm the Plan. Confirmation is subject to certain material conditions, and there is no assurance that those conditions will be satisfied.

If the Bankruptcy Court confirms the Plan, the Debtor and the Committee intend to have the Plan become effective as promptly as possible thereafter and to make an initial distribution to holders of Claims against and (if possible) Interests in the Debtor from the proceeds of the sale of substantially all of the Debtor's assets, which was consummated on October 23, 2014. The Debtor believes that all creditors will receive a significant distribution on account of their Claims and is hopeful that all Stockholders will receive a distribution on account of their Interests in the Debtor.

The Debtor and the Committee (collectively, the "Plan Proponents") request that each holder of an Impaired Claim and each Stockholder vote in favor of the Plan. The Plan Proponents recommend that voting creditors and Stockholders vote in favor of the Plan because the Plan Proponents believe that it provides for the greatest possible recovery for all creditors and Stockholders.

To have your vote counted, you must return an executed ballot (each a "Ballot") to the Claims Agent, Rust Consulting/Omni Bankruptcy on or before [●], 2015 (the "Voting Deadline"). You may mail your Ballot to one of the addresses set forth on the Ballot.

With this disclosure statement (the "Disclosure Statement") you should have received a copy of a Ballot together with instructions for completing it. If you did not, you may obtain a copy free of charge on the following website: http://omnimgt.com/epx, or by sending a letter to the address for counsel to the Debtor above. To be counted, your Ballot must be duly completed, executed, and actually received no later than the Voting Deadline.

This Disclosure Statement summarizes events that occurred prior to the Debtor's filing for bankruptcy, material events during the Chapter 11 Case, and the Plan itself. You should read this Disclosure Statement and the Plan in their entirety. The Plan Proponents believe that the information set forth in these documents is fair and accurate; however, the Plan and this Disclosure Statement (and the summaries that they provide) are qualified in their entirety by the matters to which they refer. Factual information contained in the Disclosure Statement is based on the Debtor's books and records, as well as public information related to the proceedings described in the Disclosure Statement. The Plan Proponents do not represent or warrant that the information contained in this Disclosure Statement, including the financial information, is without any inaccuracy or omission.

As you determine whether to vote to accept the Plan, you must rely on your own examination of the Debtor and the terms of the Plan, including the merits and risks

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

involved. The contents of this Disclosure Statement do not constitute any legal, business, financial, or tax advice. You should consider consulting with your own legal, business, financial, and tax advisors with respect to the Plan and the Disclosure Statement.

Except as set forth in this Disclosure Statement, no person is authorized by the Debtor to give any information or to make any representation related to the Plan other than as contained in this Disclosure Statement. You should not rely on any such representation you may receive as having been authorized by the Debtor. The Disclosure Statement does not constitute an offer to buy or the solicitation of an offer to buy any securities, or an offer to sell or a solicitation of an offer to sell any securities.

The statements contained in this Disclosure Statement are made as of the date hereof (unless otherwise indicated) and should not under any circumstance create any implication that the information contained herein is correct at any time subsequent to the date hereof. Estimates of Claims and Interests set forth in this Disclosure Statement may vary from the amounts of Claims or Interests ultimately Allowed by the Bankruptcy Court.

The information contained in this Disclosure Statement is included for purposes of soliciting votes on the Plan only and should not be deemed as an admission or stipulation of any kind, absent the Debtor's express, written consent.

INTRODUCTION

The Plan Proponents provide this Disclosure Statement in connection with the Plan they have proposed. The Plan Proponents are soliciting votes on the Plan. A copy of the Plan is attached to this Disclosure Statement as Exhibit DS-1.

This Disclosure Statement summarizes certain information regarding the Debtor's operations prior to filing for bankruptcy, its efforts to liquidate its assets, and significant events that have occurred during the Chapter 11 Case. This Disclosure Statement also describes the Plan, estimated recoveries under the Plan, the effect of confirmation of the Plan, the manner in which distributions will be made under the Plan, and summarizes the process to confirm the Plan, including voting on the Plan. **While the Plan Proponents have attempted to provide a fair and accurate summary of the matters described in this Disclosure Statement, the summary of information contained in this Disclosure Statement is not considered an admission by either of the Plan Proponents in any legal proceeding.**

On [•], 2015, the Bankruptcy Court entered an order finding that this Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code. "Adequate information" is "information of a kind, and in sufficient detail … that would enable … a hypothetical investor … to make an informed judgment about the plan." The Bankruptcy Court has authorized the Plan Proponents to use this Disclosure Statement to solicit votes on the Plan. **Even though the Bankruptcy Court has approved this Disclosure Statement and authorized the Plan Proponents to use this Disclosure Statement to solicit votes on the Plan, the Bankruptcy Court has not yet determined whether the Plan should be confirmed. This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission nor has the Commission passed upon the accuracy or adequacy of the statements contained herein.**

The Bankruptcy Court has authorized **only** this Disclosure Statement to be used in connection with solicitation of votes on the Plan. In voting to accept or reject the Plan, you should rely only on information contained in this Disclosure Statement (and accompanying exhibits) and your own examination of the Debtor and the terms of the Plan. You should not rely on information from other sources.

The Plan Proponents recommend that creditors and Stockholders entitled to vote on the Plan vote to accept the Plan.

SUMMARY OF VOTING PROCEDURES

Together with this Disclosure Statement and the accompanying exhibits, you should receive a Ballot to vote on the Plan. After reviewing this Disclosure Statement and the accompanying exhibits, if you are entitled to vote on the Plan, you should vote to accept or reject the Plan using the enclosed Ballot and return it by overnight courier or regular mail to the Claims Agent at the address specified on the Ballot. **Only holders of Claims in Classes 3a, 3b and 3c and Interests in Classes 5a, 5b and 6 may vote on the Plan. Creditors in Classes 1, 2a, 2b and 4 are unimpaired and are deemed to accept the Plan. If you are entitled to vote on the**

Plan, you must return your Ballot by overnight courier or regular mail. Ballots submitted by facsimile or other electronic transmission will not be accepted and will be void.

The Voting Deadline to vote on the Plan is [●], 2015 at 5:00 p.m. Eastern time. The Claims Agent must *receive* your Ballot on or before the Voting Deadline for your vote on the Plan to be counted. If you have not received a Ballot, or if your Ballot is lost or mutilated, you may obtain a replacement Ballot by contacting the Claims Agent at the following address:

(i) Via first-class mail, hand delivery or overnight mail –

Phoenix Payment Systems, Inc. Claims Processing
c/o Rust Consulting/Omni Bankruptcy
5955 DeSoto Avenue, Suite 100
Woodland Hills, CA 91367

(ii) Via Facsimile:

Phoenix Payment Systems, Inc. Claims Processing
c/o Rust Consulting/Omni Bankruptcy
818-783-2737

(iii) Via Email:

Phoenix Payment Systems, Inc. Claims Processing
c/o Rust Consulting/Omni Bankruptcy
lacontact@omnimgt.com

You may also contact the Claims Agent by telephone at the following number: 818-906-8300. Copies of the Plan, this Disclosure Statement, and other Plan related documents will also be available on the internet free of charge at the following website: http://omnimgt.com/epx.

ARTICLE I
OVERVIEW OF THE PLAN

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by the full text of the Plan, which is attached as Exhibit DS-1. For a more detailed description of the terms of the Plan, see Article IV, entitled "Description of the Plan."

A. Summary of Plan Structure.

The Plan is a plan of reorganization whereby certain of the Debtor's assets, the Reorganized Debtor Assets, will revest in the Reorganized Debtor, and the remainder, which is a majority of the Debtor's assets, including the proceeds from the Sale (defined below), will be transferred to the PPSI Liquidating Trust for distribution to the Debtor's creditors and Stockholders. The Reorganized Debtor will continue to operate pursuant to the terms of (a) the MSA (defined below) with the Purchaser, (b) the Processor Agreement (defined below) with NAB and (c) the Sponsorship Agreement (defined below), the Bancorp Processor Agreement (defined below) and that certain ODFI Agreement, dated as of June 15, 2007, as amended on October 23, 2014, with Bancorp (collectively, the "**Bancorp Operating Agreements**"), as it has

since the Sale closed. The Plan provides a release to the Debtor and certain other parties and exculpates the Debtor and other parties for actions taken during the course of the bankruptcy case, and limits the liability of the Reorganized Debtor, the Committee, the Post-Confirmation Committee, the PPSI Liquidating Trust and the Liquidating Trustee and related parties for actions taken in carrying out the Plan.

B. Summary of Estimated Distributions.

All creditors will receive a distribution on account of their Claims under the Plan. Certain of the creditors will be paid in full, and if the events described below occur, all creditors will be paid in full. Some or all of the Debtor's Stockholder may receive a distribution under the Plan, depending on the outcome of litigation or settlement of certain Claims and Interests described below.

The Debtor estimates that (absent relief sought in the Post Estimation Motion or the Motion to Dismiss (as each term is defined below)) it will be able to make an initial distribution of not less than $27.5 million of Cash on the Effective Date of the Plan (after the Debtor establishes the Disputed Claims Reserves pursuant to the terms of the Plan). The Debtor believes that the total amount of the Claims that are not in Dispute is $27.5. Holders of Unclassified Claims, Other Priority Claims, the Bancorp Claim and Other Secured Claims will be paid in full from the initial distribution. The Debtor estimates that the holders of General Unsecured Claims, the Frascella Claims and the Schubiger Claims will receive 90% of the amounts of their Claims from the initial distribution. The Debtor notes that on November 20, 2014, it filed the Post Estimation Motion (defined below), and that if the Post Estimation Motion is granted prior to the Effective Date, the holders of General Unsecured Claims, the Frascella Claims and the Schubiger Claims will all be paid in full and certain of the Stockholders and Class 4 Claims will receive a distribution from the initial distribution.

Subsequent distributions will depend on the outcome of the Debtor's resolution of Disputed Claims and Interests and the extent to which amounts are released from the Bancorp Reserves and the NAB Escrow. To the extent any of the Disputed Claims or Disputed Interests are reduced or disallowed, amounts related to those Claims and Interests held in the Disputed Claims Reserves will be released for distribution to the creditors and Stockholders by the PPSI Liquidating Trust. Likewise, to the extent that amounts are released from the Bancorp Reserves or the NAB Escrow, such amounts will be released for distribution to the creditors and Stockholders by the PPSI Liquidating Trust. If all amounts held in the Disputed Claims Reserve are ultimately released, all of the Debtor's creditors will receive full payment on account of their Allowed Claims, all of the Preferred Stockholders will receive the full amount of the liquidation preference of their Allowed Interests in the Debtor, and the Common Stockholders will receive a distribution on account of their Allowed Interests in the Debtor.

As set forth in further detail below, holders of Transaction Retention Plan Claims will receive a percentage of each distribution (if any) made to holders of Class 5a, 5b or 6 Interests.

A chart detailing the Classes of Claims and Interests and proposed distributions is as follows:

Class	Description	Impaired	% Recovery
Unclassified	Administrative Expense Claims	No	100%
Unclassified	DIP Facility Claims	No	100%
Unclassified	Priority Tax Claims	No	100%
1	Other Priority Claims	No	100%
2a	Bancorp Claim	No	100%
2b	Other Secured Claims	No	100%
3a	General Unsecured Claims	Yes	90%
3b	Frascella Claims	Yes	90%
3c	Schubiger Claims	Yes	90%
4	Transaction Retention Plan Claims	No	100%[2]
5a	Series B Preferred Stock Interests	Yes	0-100%
5b	Series A Preferred Stock Interests	Yes	0-100%
6	Common Stock Interests and Series C Preferred Stock Interests	Yes	N/A[3]

ARTICLE II
BACKGROUND LEADING TO CHAPTER 11 FILING

A. Incorporation of the Jacoby Declaration.

When the Debtor filed this Chapter 11 Case on August 4, 2014, Michael E. Jacoby ("**Jacoby**"), the Chief Restructuring Officer of the Debtor, filed a declaration (the "**Jacoby Declaration**") setting forth the Debtor's background and the events leading up to the Chapter 11 Case. A copy of the Jacoby Declaration is attached as Exhibit DS-2 to this Disclosure Statement. The following section contains an abbreviated summary of certain events discussed in greater detail in the Jacoby Declaration. Creditors and Stockholders are encouraged to read the Jacoby Declaration in its entirety.

B. Summary Background.

The Debtor was an international payment processor prior to the Sale. The Debtor served hundreds of merchants (the "**Merchants**") and financial institutions through its proprietary software and systems platform.

[2] As described at Section IV.C.1.a, infra, the holders of Transaction Retention Plan Claims are entitled to a percentage of whatever is distributed to Stockholders. If the Stockholders get no recovery, then Transaction Retention Plan Claims are not entitled to any recovery. Thus, the recovery is 100% of what these holders are entitled to, which does not guaranty that they will receive any recovery.

[3] Percentage recovery cannot be calculated for Common Stockholders. Common Stockholders will receive all that remains (if any), less the percentage to the holders of Transaction Retention Plan Claims, after paying Classes 1-3 and 5 in full.

The Debtor derived substantially all of its pre-Sale revenues from merchants whose customers pay with VISA U.S.A. Inc. ("**VISA**"), MasterCard International Incorporated ("**MasterCard**"), Discover Financial Services ("**Discover**") and American Express ("**Amex**," and collectively, the "**Associations**"). The Debtor's ability to provide the Merchants with access to and process merchant payment transactions with the Associations was vital to the Debtor's pre-petition business as an independent sales organization. In order to be in a position to accept and receive credit for purchases made with VISA or MasterCard credit cards, the Merchants must be a party to a merchant services agreement or similar agreement with a party that has access to the VISA/MasterCard payment and collection systems. Bancorp is such a party that has access to the VISA/MasterCard payment and collections systems. Pursuant to the processing agreements discussed below, Bancorp (i) sponsored sales and credit transactions submitted by the Debtor's Merchants whose customers use their VISA or MasterCard credit cards; (ii) sponsored the Debtor into the Associations as an independent sales organization and establishes and maintains a dedicated segregated Association Bank Identification Number (BIN) and Interbank Card Association (ICA) for the Debtor; and (iii) made payment to VISA or MasterCard for fees, and then made certain settlement payments to the Debtor. In addition, as a result of overdrafts and negative cash flow, Bancorp advanced monies to the Debtor in connection with the processing of transactions above, over a period of years, which sums, were secured (together with Guaranty of Moyer Obligations (defined and discussed below) against all of the assets of the Debtor. The advances and guaranty obligations enabled the Debtor to continue to operate while in a cash deficit position.

As a result, the Debtor had multiple agreements with The Bancorp Bank ("**Bancorp**"). They fall into two categories: (a) agreements that enabled the Debtor to operate its business with Bancorp as its sponsor bank, including (i) the ISO Agreement, dated May 31, 2005, and all related schedules and ancillary agreements attached thereto, including that certain Surety Agreement (the "**Surety Agreement**"), executed by Raymond D. Moyer, the largest stockholder of the Debtor and the Debtor's former Chief Executive Officer ("**Moyer**") (as amended pursuant to the First Amendment to the ISO Agreement, dated June 1, 2010, and the Second Amendment to the ISO Agreement, dated November 23, 2011, the "**ISO Agreement**"); (ii) the Processor Agreement, effective May 31, 2005 (as amended pursuant to the First Amendment to the Processor Agreement, dated June 1, 2010, the "**Bancorp Processor Agreement**"); (iii) the Sponsorship Agreement, dated May 31, 2005 (as amended pursuant to the First Amendment to the Sponsorship Agreement, dated June 1, 2010, the "**Sponsorship Agreement**"); and (iv) the Originating Depository Financing Institution Agreement, dated June 15, 2007; and (b) financial accommodation arrangements, including the financial accommodation letter from Bancorp to the Debtor, accepted on April 11, 2012 (the "**Accommodation Agreement**") and all exhibits thereto, including that certain Security Agreement, dated April 11, 2012 (as amended on or about June 27, 2012 and further amended on May 9, 2014, the "**Security Agreement**"). All of these agreements are collectively referred to herein as the "**Bancorp Agreements**."

In addition to the Bancorp Agreements, Moyer personally was a party to several agreements with Bancorp, including, (a) in 2002, a promissory note, credit agreement (which was modified in 2010) and mortgage whereby Bancorp extended a loan in the original principal amount of $2,000,000.00 to Moyer (the "**Moyer Loan Documents**") and (b) the Stock Pledge

and Security Agreement, dated April 11, 2011 (as amended twice on June 27, 2012, the "**Stock Pledge**," and together with the Moyer Loan Documents, the "**Moyer Agreements**"), between the Bancorp and Moyer and the Agreement and Acknowledgment of Stock Pledge, executed by the Debtor on even date. The obligations under the Moyer Loan Documents were secured by Moyer's personal residence located in Pennsylvania. As explained below, the Debtor later guaranteed Moyer's obligations under the Moyer Loan Documents, and the obligations under the Guaranty of Moyer Obligations (defined below) are governed by the Security Agreement.

The purpose and relevant provisions of each Bancorp Agreement and Moyer Agreement are as follows:

- The ISO Agreement
  - established the Debtor as an "Independent Sales Organization" (an "**ISO**");
  - set forth the Debtor's duties, among other things, as (a) marketing Bancorp's transaction processing and other services relating to transactions that use payment cards of VISA and Mastercard, (b) providing software or technical documentation and technical support in order to allow the Merchants to process sales transactions through the VISA/MasterCard processing systems, and (c) providing authorization, settlement, chargeback processing and reporting, 24 hours per day, 365 days per year; and
  - provided that accepted Merchants, Bancorp, and the Debtor enter into a merchant agreement (each such agreement a "**Merchant Agreement**").
- The Surety Agreement served as a guaranty from Moyer to Bancorp of the obligations of the Merchants under the Merchant Agreements.
- The Processor Agreement engages the Debtor to provide merchant processing and settlement services for the benefit of the Merchants on behalf of Bancorp, in its capacity as a licensee of VISA and MasterCard.
- The Sponsorship Agreement provided the Debtor with sponsorship services from Bancorp that VISA and MasterCard require in exchange for providing endpoint processing equipment.
- The Accommodation Agreement provided the Debtor with extensions of credit and extensions of payment terms from Bancorp under the Bancorp Agreements.
- The Security Agreement established a security interest in all of the assets of the Debtor to secure the Debtor's obligations to Bancorp.

- The Stock Pledge established a security interest in all of Moyer's stock certificates in the Debtor to secure Moyer's obligations under the Surety Agreement and granted an irrevocable voting proxy, exercisable at Bancorp's election upon a continuing event of default, to vote, as Moyer's proxy, Moyer's shares.

In May 2012, the Debtor defaulted under the Bancorp Agreements and Moyer defaulted under the Bancorp Agreements and the Moyer Loan Documents. Pursuant to that certain Forbearance Agreement, dated as of June 27, 2012 (the "**Forbearance Agreement**"), Bancorp agreed to forbear from exercising its remedies under the Bancorp Agreements during the period of time commencing on June 27, 2012 and ending on the earlier of October 1, 2013 or the occurrence of certain events specified in the Forbearance Agreement, including failure to comply with the Forbearance Agreement or any of the Bancorp Agreements, failure to make agreed payments to Bancorp, failure to maintain a positive cash balance, or the occurrence of certain insolvency events involving the Debtor or Moyer.

In exchange for Bancorp's agreement to forbear, the Debtor agreed, among other things, to (a) pay a forbearance fee and (b) provide an unconditional and absolute guaranty of payment to Bancorp of the obligations under the Moyer Loan Documents (the "**Guaranty of Moyer Obligations**"). The Guaranty of Moyer Obligations was secured by (i) all assets of the Debtor other than computer equipment that is leased to the Debtor and (ii) Moyer's stock certificates in the Debtor pursuant to the Security Agreement and the Stock Pledge.

In February 2013, the Debtor, Bancorp and Moyer entered into the first amendment to the Forbearance Agreement (the "**First Amendment**"). Pursuant to the First Amendment, Bancorp agreed to delay invoicing the Debtor for certain fines assessed by and/or advanced funding for VISA. Throughout 2013 and in January 2014, the Debtor received multiple notices of default of the Bancorp Agreements and the Forbearance Agreement. All of the obligations due under the Bancorp Agreements, the Forbearance Agreement and the Guaranty of Moyer Obligations were accelerated and due in full. However, the Debtor had no means to and did not make the payments.

On February 3, 2014, Bancorp exercised its right under the Stock Pledge and Voting Proxy to serve as Moyer's proxy for the purpose of voting Moyer's stock (which represents a majority of voting shares of the Debtor's stock) to remove Moyer as the sole director of the board of directors and replace him with an independent director. In turn, the independent director (constituting 100% of the board of directors) exercised a written consent removing Moyer from his position as the Debtor's Chief Executive Officer and terminating his employment with the Debtor. As set forth in further detail below, the independent director also authorized the retention of Jacoby of PMCM, LLC as the Debtor's Chief Restructuring Officer and acting Chief Executive Officer. Later, the board was expanded to three directors, and Nancy Reilly, who had been (and continued to be) the Debtor's Chief Financial Officer, was named as the Debtor's new Chief Executive Officer.

On May 9, 2014, the Debtor and Bancorp entered into the Second Forbearance Agreement (the "**Second Forbearance Agreement**"). The Second Forbearance Agreement

confirms that, as of May 8, 2014, the Debtor was indebted to Bancorp in the aggregate amount of at least $3,123,620.74 (the "**Bancorp Obligations**"), $1,759,175.25 of which was the Guaranty of Moyer Obligations. The Debtor's obligations to Bancorp are secured by a lien on all of the Debtor's property other than equipment that is leased to the Debtor.

In March 2014, the Debtor retained Raymond James & Associates, Inc. ("**Raymond James**") (based on Jacoby's recommendation as approved by the Debtor's board of directors) to assist in advising on the Debtor's strategic options, including a recapitalization, investment, sale of assets, sale of stock or other transaction in or out of court.

Immediately upon its retention, Raymond James identified financial and strategic investors (collectively, the "**Interested Parties**") to garner interest in pursuing a transaction with the Debtor of any type, including a sale, recapitalization or investment in the Debtor (a "**Potential Transaction**"). Commencing on March 25, 2014, Raymond James contacted and sent teasers to 140 Interested Parties. Fifty-four (54) of them executed non-disclosure agreements and were asked to submit initial non-binding letters of intent ("**Initial LOIs**") by April 23, 2014. Interested Parties that had executed non-disclosure agreements were then given the opportunity to gain access to an electronic data room. On or around that date, nine (9) Interested Parties submitted Initial LOIs, all of which focused on acquiring the Debtor's assets or stock. Accordingly, at that point, the Debtor devoted its attention and focus to pursuing a sale of its assets or stock. Thereafter, six (6) Interested Parties attended management presentations at the Debtor's offices in Delaware or Arizona.

Due, in large part, to the Debtor receiving a significant amount of interest from Interested Parties, and with the expectation that Interested Parties would increase and/or otherwise refine their offers for the Debtor's assets or stock once they performed further diligence, Raymond James requested that Interested Parties submit revised non-binding letters of intent ("**2nd Round LOIs**") by May 27, 2014. On or around the deadline, four (4) Interested Parties submitted 2nd Round LOIs. After reviewing and carefully considering the letters of intent, the Debtor, in consultation with its advisors, (i) determined that it should provide Interested Parties with the option to submit yet another non-binding letter of intent ("**Best and Final LOIs**") to further increase the proposed purchase price for the Debtor's assets or stock and (ii) set June 17, 2014 as the deadline to submit Best and Final LOIs. On or around such date, four (4) Interested Parties submitted Best and Final LOIs. After reviewing and carefully considering the letters of intent, the Debtor determined, in consultation with its advisors, that the Best and Final LOI submitted by NAB was the highest or otherwise best offer.

On July 31, 2014, the Debtor and the Purchaser entered into a $50 million stalking horse asset purchase agreement (the "**Stalking Horse Agreement**"). As a result of the robust and multi-staged pre-petition marketing process conducted by Raymond James, the proposed purchase price for the Debtor's assets under the Stalking Horse Agreement was 3.5 times greater than an indication of interest received late in 2013 from the Purchaser's affiliate. Moreover, the Stalking Horse Agreement provided the Debtor with a firm commitment that was not subject to any financing or due diligence contingencies and thereby provided the Debtor with a floor

against which other bidders can submit competing bids for the Debtor's assets through an auction process.

ARTICLE III
EVENTS DURING THE CHAPTER 11 CASE

This section of the Disclosure Statement summarizes material events that have occurred in the Chapter 11 Case as of the date of filing of this Disclosure Statement. This is not an inclusive list of all matters that have occurred. Creditors and Stockholders are encouraged to review the docket in the bankruptcy case for a complete list of all matters that have been put before the Bankruptcy Court. A copy of the docket may be accessed online at the following website: http://omnimgt.com/epx.

A. First Day Motions.

On the Petition Date, the Debtor filed several motions and other pleadings (the "**First Day Motions**") to ensure an orderly transition into Chapter 11, including (i) a motion to pay certain pre-petition workforce obligations and other benefits to the Debtor's employees; (ii) a motion relating to the continued use of the Debtor's existing cash management system, bank accounts and business forms; (iii) a motion to retain and employ the Claims Agent; (iv) a motion to establish procedures for determining adequate assurance for the provision of utility services; (v) a motion to pay prepetition claims of certain critical vendors; and (vi) a motion to obtain post-petition debtor-in-possession financing. The First Day Motions were granted with certain agreed limited modifications to accommodate the comments of the United States Trustee. By the authority provided in the orders approving the First Day Motions, the Debtor satisfied certain of its prepetition obligations. Accordingly, certain of the Claims existing on the Petition Date were partially or fully satisfied at that time.

B. The DIP Financing Motion.

In order for the Debtor to maintain its operations through the close of the Sale, it was necessary for the Debtor to obtain post-petition financing. After extensive and arms'-length negotiations with Bancorp, the Debtor entered into the DIP Facility. The DIP Facility was approved by the Bankruptcy Court on an interim basis on August 5, 2014 pursuant to an interim order [Docket No. 40] and on a final basis on September 3, 2014, pursuant to the *Final Order (I) Authorizing the Debtor (A) to Obtain Postpetition Financing on a Senior Secured and Granting Priming Liens and (B) to Utilize Cash Collateral Pursuant; (II) Granting Adequate Protection to the DIP Lender; and (III) Granting Related Relief* [Docket No. 149] (the "**Final DIP Order**").

Pursuant to its terms, the DIP Facility included a revolving credit facility of up to $5 million. The proceeds of the DIP Facility were used for working capital and general operating purposes subject to the terms and conditions of the Final DIP Order and to the extent set forth in the Debtor's 13 week cash flow projection, as the same was amended from time to time and the carve out provided for in the Final DIP Order. The amounts outstanding under the DIP Facility were paid in full from the proceeds of the Sale. Pursuant to the terms of the DIP Credit Agreement, Bancorp established the $2.5 million Bancorp DIP Reserve. The Bancorp DIP

Reserve will be used to satisfy any indemnification claims arising under Section 10.3 of the DIP Credit Agreement, if any become allowed. The Bancorp DIP Reserve will be the sole source of recovery (i) any DIP Indemnified Liabilities Claim arising after the Effective Date and (ii) any DIP Enforcement Indemnity Claim. Any DIP Indemnified Liabilities Claim arising after the Effective Date and any DIP Enforcement Indemnity Claim shall be limited to the extent of the Bancorp DIP Reserve. To the extent no such Claim arises prior to October 2016 (or such claims arise but do not exhaust the Bancorp DIP Reserve), all amounts in the Bancorp DIP Reserve will be released to the PPSI Liquidating Trust for distribution to creditors and Stockholders.

C. Retention of Professionals.

Shortly after filing for bankruptcy, the Debtor filed applications to retain the following professionals: Richards, Layton & Finger, P.A. as bankruptcy counsel; PMCM, LLC to provide a chief restructuring officer and certain additional personnel; the Claims Agent as administrative advisor; Raymond James as investment banker; and Bederson, LLP as accountants.

Following the formation of the Committee on August 19, 2014 [Docket No. 77], the Committee filed applications to retain Lowenstein Sandler LLP, as counsel to the Committee; White and Williams LLP, as co-counsel to the Committee; and Alvarez & Marsal North America, LLC, as financial advisors to the Committee.

The Bankruptcy Court granted each of these applications.

D. The Sale.

On July 31, 2014, the Debtor entered into the Asset Purchase Agreement with the Purchaser (then the stalking-horse bidder) contemplating the sale of substantially all of the Debtor's assets (the "**Sale**"). On the Petition Date, the Debtor filed the *Debtors' Motion to (A) Establish Bidding Procedures Related to the Sale of Substantially All of the Debtor's Assets, Approve Related Bid Protections and Establish Notice Procedures for Determining Cure Amounts, and (B) Approve the Sale of Substantially All of the Debtor's Assets and Assume and Assign Certain Executory Contracts and Unexpired Leases* [Docket No. 11] (the "**Sale Motion**") seeking approval of bid procedures and the Sale. The Asset Purchase Agreement contemplated consideration of $50,000,000 less the cure amounts that the Purchaser was required to pay pursuant to Section 2.5 of the Asset Purchase Agreement.

On August 26, 2014, the Bankruptcy Court held a hearing on the bidding procedures portion of the Sale Motion. The Court overruled the objection of Moyer and entered a bidding procedures order [Docket No. 95], which (A) established bidding and auction procedures (the "**Bidding Procedures**") related to the Sale; (B) approved the Asset Purchase Agreement as the stalking horse agreement; (C) approved bid protections; (D) scheduled an auction (the "**Auction**") and set a date and time for a sale hearing (the "**Sale Hearing**"), and approved the form and manner of notice thereof; (E) established procedures for noticing and determining cure claim amounts for executory contracts and unexpired leases to be assumed and assigned; and (F) granted certain related relief. The Debtor did not receive any qualified bids other than the

stalking horse bid prior to the bid deadline pursuant to the Bidding Procedures. Accordingly, the Debtor cancelled the Auction [Docket No. 222].

The Debtor received three objections to the Sale Motion, two of which were resolved in advance of the Sale Hearing. The remaining objection (the "**Post Sale Objection**"), filed by Post Integrations, Inc. and Ebocom, LLC (collectively, the "**Post Parties**"), asserted an interest in certain of the Debtor's source code (the "**Disputed Source Code**"). At the Sale Hearing, the Bankruptcy Court overruled the Post Sale Objection and authorized the Sale, including the sale of the Disputed Source Code (to the extent it was in the Debtor's possession), free and clear of liens and interests. On September 23, 2014, the Bankruptcy Court entered the Sale Order, and the Sale closed on October 23, 2014. In addition to satisfying certain cure claims, including prepetition Claims of counter-parties to contracts that were assumed and assigned to the Purchaser in connection with the Sale (such satisfaction being part of the overall consideration for the Sale), the Debtor satisfied certain other prepetition obligations from the proceeds of the Sale pursuant to authority granted under the orders approving the First Day Motions and the Sale Order. Accordingly, on or shortly after the closing date of the Sale, certain of the Claims against the Debtor were satisfied.

E. Filing of the Schedules and Statement of Financial Affairs and Proof of Claims and Proof of Interest Bar Date.

On September 2, 2014, the Debtor filed detailed schedules and statement of financial affairs with the Bankruptcy Court [Docket Nos. 129 & 130]. Also on September 2, 2014, the Debtor filed a motion seeking to establish a bar date for filing Proofs of Claims and Interests [Docket No. 136]. Pursuant to the *Order Establishing the Deadline for Filing Proofs of Claim and Proofs of Interest and Approving the Form and Manner of Notice Thereof* [Docket No. 250] (the "**Bar Date Order**") entered September 23, 2014, the Bankruptcy Court established October 24, 2014 at 11:59 p.m. (prevailing Eastern Time) as the bar date for filing Proofs of Claim against Proofs of Interest in the Debtor and a governmental bar date of February 2, 2015 at 11:59 p.m. (prevailing Eastern Time) (collectively, the "**Bar Date**"). On September 23, 2014, the Debtor served, among other things, notice of the *Notice of Entry of Order Establishing Bar Dates for Filing Proofs of Claim and Proofs of Interest* [Docket No. 252].

The chart below reflects Claims that were scheduled as not disputed, contingent or unliquidated, together with timely filed Proofs of Claim, in each case (i) excluding Claims that have been paid or satisfied post-petition and (ii) reducing amounts for Claims that have been stipulated to after the filing of a Proof of Claim:

Claim Priority	**Total Number of Claims Filed/Scheduled**	**Total Face Amount of Claims Filed/Scheduled[4]**
Secured Claims	7	$2,773,853
Administrative Claims	0	$0.00
Priority Claims	0	$0.00
General Unsecured Claims	84	$28,149,543[5]

The Debtor also received, prior to the Bar Date, certain Proofs of Interest that were inconsistent with the Rule 1007 List with respect to either the amount or type of Interests held. All but one of such inconsistencies have been resolved, in principle, as of the filing of the Plan. Creditors and Stockholders are encouraged to review the Rule 1007 List and the information below regarding the types and extent of Interests in the Debtor.

The Debtor is currently in the process of reviewing Proofs of Claim and Interest and assessing which claims are valid and which claim objections to prosecute. The Debtor already has filed certain claims objections and expects to file more. Consequently, the Debtor anticipates that the figures set forth above, which reflect the face amount of claims filed or scheduled (and not otherwise satisfied prior to the filing of the Plan), will be reduced following the claims reconciliation process. As set forth above and in further detail below, to the extent that the Debtor disputes an amount listed in a Proof of Claim, such amount will be reserved in a Disputed Claims Reserve until such time as the Claim is Allowed or disallowed. If such Claim is disallowed, the amounts in the Disputed Claims Reserve will be distributed by the PPSI Liquidating Trust to the Debtor's creditors and the Stockholders in accordance with the terms of the Plan.

F. The Settlement Agreement and the 9019 Motion.

Prior to the Petition Date and during the initial months of the Chapter 11 Case, the Debtor was engaged in a dispute with the Frascella Entities and the Schubiger Entities regarding the nature and extent of such entities' investments in the Debtor. The Debtor, Frascella, DWF, JEMS and Moyer have reached an agreement, in principle, which resolves this dispute, avoiding significant litigation for the Estate. The parties to this resolution are negotiating a form of Settlement Agreement reflecting their agreement, and will seek approval of the finalized Settlement Agreement by the 9019 Motion. The Settlement Agreement, when executed, will

[4] There are claims asserted against, or scheduled by the Debtor that are contingent, unliquidated, or disputed, for which no monetary value has been assigned herein.

[5] This amount assumes that the Settlement Agreement and other documents evidencing resolutions in principle of certain other Claims will be approved by the Bankruptcy Court.

provided that the parties to the Settlement Agreement agree to liquidate and allow the Claims held by Frascella, DWF and JEMS and to a related reduction in the distribution to Moyer on account of his Common Stock Interest in the Debtor. Specifically, the parties have agreed to a settlement on the following terms (subject to approval by the Bankruptcy Court):

- Frascella Capital will have a single allowed General Unsecured Claim in the amount of $6,000,000 in full and final satisfaction of any and all Claims and Interests it has asserted or may assert against the Debtor.

- DWF will not recover against the Debtor's Estate, either as an Interest holder, a General Unsecured Claim holder or otherwise.

- JEMS will have an Allowed General Unsecured Claim against the Debtor's Estate in the amount of $2,250,000 in full and final satisfaction of any and all Claims and Interests it has asserted or may assert against the Debtor.

- On account of his Interests in the Debtor, Moyer will be entitled to a Pro Rata distribution from the Estate of funds available to Common Stockholders under the Plan, provided, however, that the amount of any such distribution will be reduced by $750,000, with such amount instead to be made available to Stockholders other than Moyer.

- The Debtor, Frascella Capital, DWF and JEMS will exchange mutual releases that will resolve all Claims that they assert or could assert against each other.

- Frascella Capital, DWF and JEMS will agree to support the Plan.

As set forth above, the Debtor will seek approval of the Settlement Agreement through the 9019 Motion, which the Debtor intends to file as promptly as possible. Upon approval of the 9019 Motion, Frascella, DWF and JEMS will each hold allowed Claims against the Debtor in the amounts specified in the Settlement Agreement. None of the Frascella Entities or the Schubiger Entities will hold any Claims against or Interests in the Debtor other than those specified in the Settlement Agreement.

G. The Post Litigation.

The Post Parties filed the Post Sale Objection, which was overruled by the Bankruptcy Court at the Sale Hearing. On October 7, 2014, the Post Parties filed a motion pursuant to Bankr. Rule 2004 seeking production of a copy of the Disputed Source Code (the "**Rule 2004 Motion**") [Docket No. 284]. The Debtor and the Committee both objected. On November 4, 2014, following a hearing on the Rule 2004 Motion, the Bankruptcy Court entered an order denying the Rule 2004 Motion [Docket No. 348]. The order required that any adversary proceeding concerning the Disputed Source Code be filed by November 11, 2014.

While the Rule 2004 Motion was pending, the Post Parties also filed a Proof of Claim. Despite asserting that in reality it has an ownership interest and not a Claim, the Post Parties' Proof of Claim nevertheless in the alternative asserts a claim of $10 million.

On November 11, 2014, the Debtor and the Post Parties each filed an adversary proceeding against the other. The Post Parties' adversary proceeding (Case No. 14-50963 (MFW)) seeks declaratory judgments regarding the ownership of the Disputed Source Code, the value of the Disputed Source Code, and the Post Parties' entitlement to the Sale Proceeds and an order for immediate distribution of the value of the Post Parties' ownership interest in the Disputed Source Code. The Debtor's adversary proceeding (Case No. 14-50964 (MFW)) seeks declaratory judgments that the Post Parties do not and have never owned the Disputed Source Code and have not and do not have any other ownership interest, right or entitlement in the Disputed Source Code. The Debtor's adversary proceeding also contains a count that objects to the Proof of Claim filed by the Post Parties. [The two adversary proceedings subsequently were consolidated.] While the Debtor intends to promptly file case dispositive motions, it is likely that the litigation with the Post Parties will not be resolved prior to the Effective Date of the Plan. The outcome of this litigation will impact distributions to creditors and Stockholders.

On November 20, 2014, the Debtor filed the *Debtor's Motion to Estimate the Maximum Amount of Post's Proof of Claim* [Docket No. 385] (the "**Post Estimation Motion**"). The Post Estimation Motion seeks an order setting the maximum estimated amount of the Proof of Claim filed by the Post Parties of $500,000.00 for the purposes of setting a reserve. To the extent that the Post Estimation Motion is approved prior to the Effective Date, the Debtor anticipates that the initial distribution under the Plan will satisfy in full all Clams against the Debtor and that some or all Classes of Stockholders will receive a distribution as well.

On December 15, 2014, the Debtor filed a motion to dismiss the Post Parties' complaint and an accompanying brief in support of the motion (the "**Motion to Dismiss**"). Briefing on the Motion to Dismiss is anticipated to take place over the coming weeks.

ARTICLE IV
DESCRIPTION OF THE PLAN

A. Overview.

The Plan is a plan of reorganization that provides a means for a portion of the Debtor's business to continue so that the Debtor can satisfy its obligations under the MSA and the Processor Agreement and a mechanism for the prompt distribution of the Debtor's remaining assets comprising of the so-called "Liquidating Trust Assets" (i.e. those assets, including the Sale proceeds, not required for the Reorganized Debtor to perform under the MSA and the Processor Agreement) to its creditors and Stockholders.

The Purchaser acquired substantially all of the Debtor's assets pursuant to the Sale. To facilitate the transition of the assets to the Purchaser (and, with respect to a subset of the assets, NAB), the Debtor, pursuant to the MSA, agreed to maintain direct connections into (i) the transaction network processing systems of Visa and MasterCard, (ii) the transaction processing

system of Discover, and (iii) the credit authorization system of Amex (such direct connections, the "**Endpoint Connections**"), until the earlier of October 31, 2017 or the date that all consents to change the ownership of the Endpoint Connections from the Debtor to the Purchaser are received by Purchaser from Visa, MasterCard, Discover and Amex or new endpoint connections are established by the Purchaser with Visa, MasterCard, Discover and Amex, as applicable. To maintain the Endpoint Connections, the Debtor agreed to maintain the assets and resources that are set forth on Schedule 3.4 of the MSA (the "**Debtor's Transition Assets**"), including the Bancorp Operating Agreements. The Debtor's Transition Assets were not sold to the Purchaser or NAB pursuant to the Sale and continue to be the Debtor's assets. These are the assets which will become the Reorganized Debtor Assets pursuant to the Plan.

To further facilitate the transition, the Debtor and NAB entered into the Processor Agreement for an initial term of three (3) years (unless earlier terminated pursuant to Section 9.1 thereof), pursuant to which NAB engaged the Debtor to provide certain merchant processing and settlement services described on Schedule "A" thereto (the "**Transition Processing Services**"). Because all of the Debtor's employees became employees of the Purchaser pursuant to the Asset Purchase Agreement, the Purchaser agreed pursuant to the MSA to provide the Debtor with access to the personnel, resources, systems, applications and hardware reasonably required to enable the Debtor to perform the Transition Processing Services (the "**Purchaser Supplied Resources**"). The Purchaser is not receiving any compensation from the Debtor for providing the Purchaser Supplied Resources under the MSA. NAB is paying the Debtor the fees set forth on Schedule A to the Processor Agreement for providing the Transition Processing Services.

Unless the MSA and the Processor Agreement are terminated prior to the Effective Date, through the Effective Date, the Debtor will continue to maintain the Endpoint Connections and, using the Purchaser Supplied Resources, will continue to perform the Transition Processing Services. If the MSA and the Processor Agreement remain in effect after the Effective Date, the Reorganized Debtor will continue to maintain the Endpoint Connections and, using the Purchaser Supplied Resources, will continue to perform the Transition Processing Services. The Plan provides that all of the Debtor's Transition Assets, the MSA, the Processor Agreement and the Bancorp Operating Agreements, including all of the Debtor's rights and privileges thereunder for the period after the Effective Date, will vest in the Reorganized Debtor on the Effective Date.

The rest of the Debtor's assets will vest in the PPSI Liquidating Trust, which in turn will distribute the assets to the Debtor's creditors and Stockholders. On the Effective Date, the PPSI Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, and all of the Liquidating Trust Assets (all of the Debtor's assets other than the Reorganized Debtor Assets) will vest in the PPSI Liquidating Trust for distribution to the Debtor's creditors and Stockholders. From the Liquidating Trust Assets, the Liquidating Trustee, in consultation with the Post-Confirmation Committee, will establish Disputed Claims Reserves with respect to each Disputed Claim or Disputed Interest. After such reserves have been established, the Disbursing Agent, in consultation with the Post-Confirmation Committee, will make distributions to the Debtor's creditors and Stockholders from the remaining assets in the PPSI Liquidating Trust. The Plan Proponents anticipate that this initial distribution will satisfy in full all of the Unclassified Claims and the Claims in Classes 1, 2a, 2b and 4. This initial distribution will also

satisfy some or all of the Claims held in Classes 3a, 3b and 3c (depending on the outcome of the Post Estimation Motion or the Motion to Dismiss).

The Plan provides the PPSI Liquidating Trust with the authority to resolve Disputed Claims and Interests. As Disputed Claims are resolved (either consensually or by Final Order), the amounts related to such Disputed Claims in the Disputed Claim Reserves will be released for distribution to the Debtor's creditors and Stockholders by the PPSI Liquidating Trust. If the Liquidating Trustee resolves the Disputed Claims favorably for the Beneficiaries of the Trust, the amounts released from the Disputed Claims and Interests Reserves could (depending on the amounts so released) be sufficient to fully satisfy the Claims in Classes 3a, 3b and 3c and all or a portion of the Interests held in Classes 5a and 5b as well as Interests in Class 6.

The Plan further provides that the Debtor's Litigation Rights[6] are Liquidating Trust Assets and that the PPSI Liquidating Trust and the Liquidating Trustee will retain and may enforce all rights to commence and pursue, as appropriate, any and all causes of action in which the Debtor or the Estate has Litigation Rights. To the extent that the PPSI Liquidating Trust exercises the Litigation Rights and successfully pursues causes of action, additional Cash could become available for distribution to the Debtor's creditors and Stockholders.

B. Administrative Expense Claims, DIP Facility Claims and Priority Tax Claims.

Administrative Expense Claims are specified in section 503 of the Bankruptcy Code and generally include those expenses related to the administration of the Bankruptcy Case, principally in this case the fees and expenses of Professionals retained by the Debtor because most claims that arose post-petition or under Section 503(b)(9) of the Bankruptcy Code were already paid in the ordinary course of business. DIP Facility Claims are Claims existing under the DIP Facility. Priority Tax Claims are those set forth in sections 502(i) and 507(a)(8) of the Bankruptcy Code. Under the Bankruptcy Code, these Claims may not be "classified" and must be paid in full and in Cash to confirm the Plan.

Under the Plan, all Requests for Payment and Claims for Professional Fees must be filed no later than forty-five (45) days after the Effective Date of the Plan or otherwise be barred for all purposes by operation of the Plan. Administrative Expense Claims, DIP Facility Claims and Priority Tax Claims that are Allowed will be paid in full under the Plan.

Other than Professional Fees, the Debtor does not believe that there will be any Administrative Expense or Priority Tax Claims that are due and have not already been paid. However, because the applicable Bar Dates have not yet passed, there is no assurance that there will not be any such Claims. Further, because the amounts outstanding under the DIP Facility were satisfied from the proceeds of the Sale, the Debtor and Bancorp do not believe that there will be any DIP Claims. Also, the Debtor does not believe that there will be any DIP

[6] The Plan defines Litigation Rights as the claims, rights of action, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtor or its Estate may hold against any Person, which are to be retained by the PPSI Liquidating Trust pursuant to Section 5.11 of the Plan, including, without limitation, claims or causes of action arising under or pursuant to Chapter 5 of the Bankruptcy Code. For the avoidance of doubt, Litigation Rights do not include any cause of action acquired by the Purchaser pursuant to the Asset Purchase Agreement.

Indemnified Liabilities Claims or DIP Enforcement Indemnity Claims, but as set forth above, any DIP Indemnified Liabilities Claim arising after the Effective Date and any DIP Enforcement Indemnity Claim are limited to $2.5 million, and shall be paid solely from the Bancorp DIP Reserve pursuant to Section 3.1(b) of the Plan.

C. Classification and Treatment of Claims and Interests.

Section 1123(a)(1) of the Bankruptcy Code requires that the Debtor designate Classes of Claims and Interests, other than Administrative Expense Claims and Priority Tax Claims, under the Plan consistent with section 1122 of the Bankruptcy Code. The classification set forth in the Plan is applicable for purposes of voting, distribution and confirmation of the Plan.

Set forth below are the Classes of Claims and Interests under the Plan, as well as whether or not such Classes are "impaired" within the meaning of the Bankruptcy Code. Only impaired Classes may vote on the Plan. Unimpaired classes are deemed to accept the Plan and may not vote.

1. Classification and Treatment of Classified Claims and Interests.

a. Unimpaired Classes – Not Entitled to Vote and Deemed to Accept.

Class 1 – Other Priority Claims. Other Priority Claims are Claims entitled to priority in payment under section 507 of the Bankruptcy Code, other than Administrative Expense Claims and Priority Tax Claims. Holders of Other Priority Claims that are Allowed will receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim, either (i) Cash equal to the unpaid portion of such Allowed Other Priority Claim or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 1 Claims are not impaired under the Plan. The Debtor believes that there are no Other Priority Claims against the Debtor that have not been satisfied pursuant to a Final Order prior to the filing of the Plan.

Class 2a – Bancorp Claim. The Bancorp Claim is an Allowed Secured Claim existing under the Bancorp Credit Agreements. Bancorp will receive, in full satisfaction, settlement, release, and discharge of and in exchange for the Bancorp Claim, either (i) Cash equal to the amount of the Bancorp Claim or (ii) such different treatment as to which Bancorp and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. The Class 2a Claim is unimpaired under the Plan and is deemed to accept the Plan. The amount of the Bancorp Claim was $2,233,304.00 as of October 23, 2014.

Class 2b – Other Secured Claims. Other Secured Claims are Claims that arose prior to the Petition Date that are supported by collateral and entitled to legal priority under the Bankruptcy Code. Holders of Allowed Other Secured Claims will receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Secured Claim, either (i) Cash equal to the amount of such Allowed Secured Claim or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 2b Claims are unimpaired under the Plan and are deemed to

accept the Plan. The Debtor believes that the amount of outstanding Other Secured Claims is approximately $540,549 comprised of a $483,431 claim originally held by Wollmuth Maher & Deutsch, LLC and subsequently transferred and five other Claims totaling $57,118. There can be no assurances that others (e.g., taxing authorities) will not assert Class 2b Claims.

Class 4 – Transaction Retention Plan Claims. Transaction Retention Plan Claims are Claims under the Transaction Retention Plan, dated February 23, 2012. In summary, the Transaction Retention Plan provides that when a "covered transaction" occurs, a certain percentage of the net proceeds from that transaction distributable to the Stockholders are instead paid to the participants under the Transaction Retention Plan. "Covered transactions" under the Transaction Retention Plan include a sale of substantially all of the Debtor's assets that results in a distribution of sale proceeds to the Stockholders. Accordingly, to the extent distributions are made pursuant to the Plan to the Stockholders, participants under the Transaction Retention Plan are entitled to a percentage of the distribution to Stockholders. Because the Transaction Retention Plan does not specify that the participants will receive a specific amount, but rather, a percentage of the distribution to Stockholders, if ultimately no distributions are made to Stockholders, the Transaction Retention Plan Claims will not be entitled to any distribution. Class 4 is unimpaired because the holders of Transaction Retention Plan Claims will be paid in full all amounts to which they are entitled pursuant to the Transaction Retention Plan -- whether that amount is $0 or a higher recovery.

b. Impaired Classes – Entitled to Vote.

Class 3a – General Unsecured Claims. General Unsecured Claims are Claims that arose prior to the Petition Date that are not supported by collateral and not entitled to legal priority under the Bankruptcy Code. Holders of Allowed General Unsecured Claims shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed General Unsecured Claims, either (i) a Pro Rata share of the Cash available for distribution to Classes 3a-c after the satisfaction of the Unclassified Claims, the Other Priority Claims, the Bancorp Claim and the Other Secured Claims; or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 3a Claims are impaired under the Plan and are entitled to vote to accept or reject the Plan. The Debtor believes that the amount of outstanding General Unsecured Claims (including disputed Claims) is approximately $28,149,543.

Class 3b – Frascella Claims. Frascella Claims are any Claims or Interests of any kind that are held by any one or more of the Frascella Entities as set forth in further detail in the Settlement Agreement. Holders of Allowed Frascella Claims shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Frascella Claims, the treatment specified in the 9019 Motion and the Settlement Agreement. Class 3b Claims are impaired under the Plan and are entitled to vote to accept or reject the Plan. Pursuant to the Settlement Agreement, the amount of the Frascella Claims is $6,720,679.00.

Class 3c – Schubiger Claims. Schubiger Claims are any Claims or Interests of any kind that are held by any one or more of the Schubiger Entities as set forth in further detail in the

Settlement Agreement. Holders of Allowed Schubiger Claims shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Schubiger Claims, the treatment specified in the 9019 Motion and the Settlement Agreement. Class 3c Claims are impaired under the Plan and are entitled to vote to accept or reject the Plan. Pursuant to the Settlement Agreement, the amount of the Schubiger Claims is $2,225,000.00.

For the avoidance of doubt, the holders of Claims in Classes 3a-c shall share Pro Rata pursuant to the following formula:

$$\frac{\text{Cash available for distribution to Claims in Classes 3a-c}}{\text{Claims in Classes 3a-c}}$$

On the Effective Date, the Debtor estimates Class 3a-3c Claims will receive approximately 90% distribution, or 100% if the Post Estimation Motion or the Motion to Dismiss is granted.

Class 5a – Series B Preferred Stock Interests. The Series B Preferred Stock Interests are comprised of the Series B-1 Preferred Stock Interests, the Series B-2 Preferred Stock Interests, the Warrants for the Series B-3 Preferred Stock Interests, and the Series B-4 Preferred Stock Interests.

The Series B-1 Preferred Stock Interests are held by Moyer, and any distribution on account of the Series B-1 Preferred Stock Interests will be setoff, in part, by the Moyer Setoff Amounts and the amounts set forth in the Settlement Agreement.

As set forth in Rule 1007 List, the Series B-2 Preferred Stock Interests are held by certain of the Frascella Entities and three other individuals. The Series B-2 Preferred Stock Interests held by the Frascella Entities will be satisfied pursuant to the terms of the Settlement Agreement and the 9019 Motion through a distribution on account of their Claims in Class 3b and not through a distribution on account of any Interests held in Class 5a. The remaining holders of Series B-2 Preferred Stock Interests will receive the treatment specified below.

There are no outstanding Series B-3 Preferred Stock Interests. Prior to the Petition Date, the Debtor issued the Warrant for Series B-3 Preferred Stock Interests, which entitled its holder, the Wollmuth Maher & Deutsch, LLC law firm, the option to purchase Series B-3 Preferred Stock Interests in the Debtor. This purchase right was not executed prior to the close of the Sale, and pursuant to the terms of the Warrant for Series B-3 Preferred Stock Interests, the period during which the holder of the warrant could exercise its purchase right terminated when the Sale closed. In any event, the warrant's exercise price was out of the money. Accordingly, there are no and will not be any Series B-3 Preferred Stock Interests in the Debtor.

There also will be no Allowed Series B-4 Preferred Stock Interests. As set forth in Rule 1007 List, there were only two alleged holders of Series B-4 Preferred Stock Interests. One was JEMS, one of the Schubiger Entities. The Series B-4 Preferred Stock Interests held by JEMS

will be satisfied pursuant to the terms of the Settlement Agreement and the 9019 Motion through a distribution in Class 3c and not through a distribution on account of any Interests held in Class 5a. The Debtor listed the other alleged Series B-4 Preferred Stock Interests holder as Disputed on the Rule 1007 List, and the holder has not filed a Proof of Interest, as required by the Bar Date Order. Accordingly, the Debtor will not make a distribution to this holder.

Holders of Allowed Series B Preferred Stock Interests shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Series B Preferred Stock Interest, either (i) a Pro Rata share of the Cash available for distribution after full satisfaction of Claims in Class 4, at the fixed liquidation preference price of such Allowed Series B Preferred Stock Interest or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 5a Interests are impaired under the Plan and are entitled to vote to accept or reject the Plan. The fixed liquidation preference for (a) the Series B-1 Preferred Stock Interests is $4.36 per share and 1,929,502 shares of Phoenix Series B-1 Preferred Stock are outstanding for a total of $8,412,628.72; and (b) the Series B-2 Preferred Stock Interests is $2.75 per share and 87,479 shares of Phoenix Series B-2 Preferred Stock will be outstanding following implementation of the Settlement Agreement for a total of $240,567.25. As set forth above, there will be no Allowed Series B-3 Preferred Stock Interests or Series B-4 Preferred Stock Interests. The Debtor intends to apply the Moyer Setoff prior to making a distribution on the Series B-1 Preferred Stock Interests. A chart reflecting this information is below:

Interest Type	Liquidation Preference	Outstanding Shares	Total Amount
Series B-1	$4.36	1,929,502	$8,412,628.72
Moyer Setoff			($3,434,039.00)
Series B-2	$2.75	87,479	$240,567.25
Series B-3	$2.33	0	$0
Series B-4	$2.35	0	$0
Totals		**2,016,981**	**$5,219,156.97**

Class 5b – Series A Preferred Stock Interests. The Series A Preferred Stock Interests are held by Moyer. It is likely that Moyer will either exercise or be deemed to have exercised conversion rights with respect to the Series A Preferred Stock Interests. If such conversion occurs, the Series A Preferred Stock Interests will be converted into Common Stock. Holders of Allowed Series A Preferred Stock Interests shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Series A Preferred Stock Interest, either (i) a Pro Rata share of the Cash available for distribution after full satisfaction of Interests in Class 5a and Claims in Class 4, at the fixed liquidation preference or redemption price, if any, of such Allowed Series A Preferred Stock Interest or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 5b Interests are impaired under the Plan and are entitled to vote to accept or reject the Plan. The fixed liquidation preference for the Series A Preferred Stock Interests is $0.08 per share and 5,321,101 shares of Phoenix Series A Preferred Stock are outstanding. Thus, if the shares are not converted to Common Stock, the total amount paid (or setoff) in this Class is $425,688.08.

Class 6 – Common Stock Interests and Series C Preferred Stock Interests.

The Common Stock Interests are held by several individuals, including Moyer, and other entities.

The Series C Preferred Stock Interests are held by one individual. Pursuant to the terms of the documents evidencing the Series C Preferred Stock Interests, such Interests do not receive any special rights beyond Common Stockholder Interests unless such special rights (such as a liquidation preference) are triggered under the applicable certificate of designation. Here, no such special rights have been or will be invoked because the certificate of designation states that the liquidation preference is triggered only if the liquidation or sale of the Debtor's assets occurs five years or more after the issuance of the Phoenix Series C Preferred Stock. All of the outstanding Phoenix Series C Preferred Stock was issued in September 2013. Accordingly, because the Sale occurred in 2014 and all distributions will be made under the Plan prior to September 2018, the Debtor intends to treat the Series C Preferred Stock Interests as Common Stock Interests for the purposes of distribution under the Plan. The Confirmation Order shall constitute a ruling that this treatment is proper.

Holders of Allowed Common Stock Interests and Allowed Series C Preferred Stock Interests (the "**Class 6 Interest**") shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Class 6 Interest, either (i) a Pro Rata share of the remaining Cash of the Estate and the PPSI Liquidating Trust after the distribution to the holders of Claims in Class 4 and Interests in Class 5b or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Class 6 Interests are impaired under the Plan and are entitled to vote to accept or reject the Plan. The total number of shares of Common Stock outstanding is as follows:

Total outstanding Common Shares	Series C Shares	Series A Shares	Total Shares if conversion occurs
2,322,788	6,435	5,321,101	**7,650,324**

2. Claims and Interests May Be in More Than One Class.

A Claim or Interest is part of a particular Class only to the extent that the Claim or Interest qualifies within the definition of that Class and such Claim or Interest is part of a different Class to the extent that the remainder of the Claim or Interest qualifies within the description of a different Class. A Claim or Interest is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent the Claim or Interest is an Allowed Claim or an Allowed Interest and the Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

3. Impairment, Classification, and Related Disputes.

A holder of a Claim or Interest may dispute the classification of a Claim or Interest or the treatment of a Class (including whether a Class is impaired or unimpaired), by objecting to the Plan or otherwise filing an appropriate motion to challenge the classification, characterization or

treatment of the Claim, the Interest, or the Class. The deadline to file any such motion or objection is the deadline set by the Bankruptcy Court to object to confirmation of the Plan. If the Bankruptcy Court does not grant the motion or otherwise confirms the Plan without conditioning confirmation upon any grounds raised in such a motion or objection, the treatment, characterization, and classification set forth in the Plan will be binding upon all holders of Claims and Interests.

D. Acceptance or Rejection of the Plan.

1. Classes of Claims and Interests Entitled to Vote.

Creditors in Classes 1, 2a, 2b and 4 are unimpaired and are deemed to accept the Plan. Creditors in Classes 3a, 3b and 3c, and Holders of Interests in Classes 5a, 5b and 6 are impaired and may vote on the Plan.

2. Acceptance by a Class of Interests.

In accordance with Bankruptcy Code Section 1126(c), and except as provided in Bankruptcy Code Section 1126(e), the Impaired Classes of Claims shall have accepted the Plan if the Plan is accepted by the 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 such Class that have timely and properly voted to accept or reject the Plan. In accordance with Bankruptcy Code Section 1126(d), and except as provided in Bankruptcy Code Section 1126(e), the Impaired Classes of Interests shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount of the Allowed Interests of such Class that have timely and properly voted to accept or reject the Plan.

3. Cramdown.

To the extent that any of the Impaired Classes votes to reject the Plan, the Debtor will request that the Bankruptcy Court confirm the Plan notwithstanding such rejection under the cramdown provisions of the Bankruptcy Code, because the Plan is fair and equitable and does not discriminate unfairly with respect to any Class that rejects the Plan.

E. Effects of Confirmation.

1. Revesting of Reorganized Debtor Assets.

On the Effective Date, the Reorganized Debtor Assets shall revest in the Reorganized Debtor. All of the Reorganized Debtor Assets are required for the Reorganized Debtor to continue to operate the portion of the Debtor's business that could not be transferred to the Purchaser upon the closing of the Sale. Following such revesting, the Reorganized Debtor may operate its business and may use, acquire, and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, or Bankruptcy Court approval. Except as specifically provided in the Plan or the Confirmation Order, as of the Effective Date, all property

of the Reorganized Debtor shall be free and clear of all Claims and Interests, and all Liens with respect thereto.

2. Vesting of Liquidating Trust Assets in the PPSI Liquidating Trust

On the Effective Date, the Liquidating Trust Assets shall vest automatically in the PPSI Liquidating Trust for distribution to the Debtor's creditors and Stockholders, the Beneficiaries under the PPSI Liquidating Trust.

3. Preservation and Retention of Defenses of the Debtor and Rights to Object to Claims and Interests.

Confirmation of this Plan will have no impact upon, and will not render *res judicata*: (i) the Debtor's, the Reorganized Debtor's, the PPSI Liquidating Trust's or the Liquidating Trustee's rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment; or (iii) any party's right to object to any Claim against or Interest in the Debtor, subject to any limitation expressly set forth in the Plan. Similarly, nothing herein shall prejudice or be deemed to prejudice creditors' rights of setoff or recoupment.

4. Authority to Effectuate the Plan.

Except as expressly set forth in the Plan, on the Effective Date, all matters provided for under the Plan will be authorized and approved without further approval or order of the Bankruptcy Court.

5. No Waiver of Legal Privileges.

Confirmation of the Plan will not waive the attorney/client, work product, or other legal privileges of the Debtor. Further, as set forth in the Plan, (i) the Liquidating Trust Assets include the attorney-client privilege related or incidental to the assets identified in definition of the Liquidating Trust Assets and (ii) the Reorganized Debtor Assets include the attorney-client privilege related or incidental to the assets identified in the definition of the Reorganized Debtor Assets. Accordingly, the Plan explicitly preserves the attorney-client privilege, and the Liquidating Trustee and the Reorganized Debtor are each authorized to assert the attorney-client privilege related to their respective assets.

F. Means of Implementation of the Plan.

1. Continued Corporate Existence.

The Reorganized Debtor shall continue to exist as of and after the Effective Date as a legal entity, in accordance with the applicable laws of the State of Delaware and pursuant to the New Debtor Governing Documents.

2. Entity Governance Documentation.

The certificate of incorporation and by-laws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among other things, pursuant to Bankruptcy Code Section 1123(a)(6), a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by Bankruptcy Code Section 1123(a)(6). The certificate of incorporation and by-laws of the Debtor, as amended, shall constitute the New Debtor Governing Documents. The New Debtor Governing Documents shall be in substantially the forms of such documents included in the Plan Supplement and shall be in full force and effect as of the Effective Date.

3. The PPSI Liquidating Trust.

a. Appointment of the Liquidating Trustee.

On the Effective Date, PMCM 2, LLC shall be appointed as the Liquidating Trustee. PMCM 2, LLC is an affiliate of PMCM, LLC, which was retained by Final Order in the Chapter 11 Case. PMCM 2, LLC is expected to have Jacoby as its designated officer for the purposes of administering the PPSI Liquidating Trust. Jacoby has been the Debtor's Chief Restructuring Officer before and during the Chapter 11 Case.

To the extent PMCM 2, LLC declines or is unable to serve, the Debtor, in consultation with the Committee, shall appoint another Liquidating Trustee on or prior to the Confirmation Date.

b. Rights, Powers, and Duties of the PPSI Liquidating Trust and the Liquidating Trustee.

The PPSI Liquidating Trust shall be established for the purpose of, *inter alia*, (a) administering the Liquidating Trust Assets, (b) resolving and/or litigating Disputed Claims, (c) pursuing or determining not to pursue actions preserved as Litigation Rights, and (d) making all distributions to the Beneficiaries provided for under the Plan.

c. Compensation of the Liquidating Trustee.

The Liquidating Trustee will be compensated from the Liquidating Trust Assets. The compensation payable to the Liquidating Trustee shall be based on the hourly rates of those persons employed by the Liquidating Trustee to effectuate the terms of the Plan, as well as the other expenses incurred to effectuate the Plan. The Liquidating Trustee may pay itself compensation from the Liquidating Trust Assets without prior order of the Bankruptcy Court, subject to providing the Post-Confirmation Committee with 14 days' notice to oppose the reasonableness of the compensation. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee shall not be required to file a notice with the Bankruptcy Court with respect to the compensation of the Liquidating Trustee. Such compensation, however, may be summarized in the annual reports regarding the liquidation and other administration of property comprising the Liquidating Trust Assets prepared in pursuant to Section 5.9(e) of the Plan.

d. Limitations on Liability.

The Liquidating Trustee shall not incur liability to any Person by reason of discharge of its duties as set forth in the Plan, except in the event of gross negligence or willful misconduct.

e. Retention of Professionals.

The PPSI Liquidating Trust may retain attorneys, accountants, or other professionals to represent the interests of the PPSI Liquidating Trust, including attorneys, accountants, and other professionals previously employed by the Debtor. The Liquidating Trustee may compensate such Professionals from the Liquidating Trust Assets without prior order of the Bankruptcy Court.

4. The Post-Confirmation Committee

On the Effective Date, the Committee shall be reconstituted as the Post-Confirmation Committee, comprised of all of its members and represented by its retained Professionals. The bylaws previously adopted by the Committee shall continue to govern the actions of the Post-Confirmation Committee, and the fiduciary duties, including rights to immunity, that applied to the Committee prior to the Effective Date shall apply to the Post-Confirmation Committee, including those set forth in Bankruptcy Code sections 1102 and 1103. These bylaws may be amended from time to time by the Post-Confirmation Committee in its discretion. The Post-Confirmation Committee shall have the duties set forth herein to execute the Plan and to maximize distributions to holders of Claims, including those duties set forth in the Liquidating Trust Agreement.

The duties and powers of the Post-Confirmation Committee shall terminate on the later to occur of (i) the settlement or other resolution of all Disputed Claims on a final basis, except for the Disputed Claim filed by POST and those Claims set forth in the Plan Supplement and (ii) the payment of the final distributions to all creditors in Classes 3a-3c pursuant to the Plan, except for the Disputed Claim filed by POST and those Claims set forth in the Plan Supplement. Upon termination of its duties in connection with Section 5.15(c) of the Plan and the satisfaction of the outstanding expenses of the members of the Post-Confirmation Committee, including the fees and expenses of the Professionals of the Post-Conformation Committee, the Post-Confirmation Committee will automatically dissolve without any further action needed to effectuate such dissolution. Any provision in the Plan (or described in this Disclosure Statement) that provides for consultation with the Committee or the Post-Confirmation Committee requires no consultation upon the Post-Confirmation Committee's dissolution.

The Post-Confirmation Committee shall retain and be deemed to have retained the Committee Professionals on the Effective Date. All reasonable fees and expenses of the Post-Confirmation Committee Professionals shall be borne by the PPSI Liquidating Trust and paid by the Liquidating Trustee within thirty (30) days after submission of an invoice unless the Liquidating Trustee objects to reasonableness prior to the 30th day.

G. Objection to and Resolution of Claims Against and Interests in the Debtor.

1. Authority to Object to and Resolve Objections to Claims and Interests.

The Liquidating Trustee, in consultation with the Post-Confirmation Committee, may prosecute, settle, or decline to pursue objections to any Claims against or Interests in the Debtor in accordance with the terms of the Plan, whether objections to the Claims or Interests were filed prior to or after the Effective Date.

2. Deadline for objection to Claims and Interests.

The last day for filing objections to Claims in the Bankruptcy Court shall be the latest of (i) sixty (60) days after the Effective Date, (ii) sixty (60) days after the applicable Proof of Claim or Request for Payment is filed (except as otherwise provided in Section 10.1 of the Plan), and (iii) such other later date as is established by order of the Bankruptcy Court upon motion of the Liquidating Trustee. In consultation with the Post-Conformation Committee, the Liquidating Trustee may, in its discretion, move to extend the Claim Objection Deadline at any time prior to the expiration of the Claim Objection Deadline.

3. No Bankruptcy Court Approval Required for Resolution of Disputed Claims.

The Plan does not require the Liquidating Trustee to obtain Bankruptcy Court approval for the resolution of any Disputed Claim or Interest. To the extent, however, the Liquidating Trustee is unable to resolve a Disputed Claim or Disputed Interest, the Liquidating Trustee will seek for the Bankruptcy Court to make a determination resolving such disputes.

4. Estimation of Claims.

The Plan authorizes the Liquidating Trustee to request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code. The Bankruptcy Court may estimate Claims to: (i) establish the Allowed amount of the Claim for purposes of distribution; or (ii) to establish the maximum amount of any such Claim, without prejudice to the Liquidating Trustee later objecting to the Claim.

H. Distributions.

1. Distributions on Account of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed DIP Facility Claims, Other Priority Claims, Bancorp Claims and Other Secured Claims.

The Disbursing Agent, in consultation with the Post-Confirmation Committee, will pay Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed DIP Facility Claims, Allowed Bancorp Claims and Allowed Other Secured Claims in full on or as soon as practicable after the later of (a) the Effective Date, or (b) after such Claim becomes an Allowed Claim; or (c) at such other time and in such other manner as may be agreed upon in writing between the holder of such Claim and the Liquidating Trustee.

2. Distributions on Account of Allowed Transaction Retention Plan Claims.

The Disbursing Agent will pay Allowed Transaction Retention Plan Claims all amounts to which the holder of an Allowed Transaction Retention Plan Claim is entitled pursuant to the Transaction Retention Plan immediately prior to any distribution to Stockholders. Unless any payment will be made to Classes 5a, 5b or 6, no payment will be made on account of the Transaction Retention Plan Claims pursuant to the terms of the Transaction Retention Plan.

3. Distributions Paid to Holders of Allowed General Unsecured Claims, Allowed Frascella Claims and Allowed Schubiger Claims.

a. General Unsecured Claims, Frascella Claims and Schubiger Claims Allowed Prior to the Effective Date.

The Disbursing Agent will make an initial distribution to holders of Allowed General Unsecured Claims, Allowed Frascella Claims and Allowed Schubiger Claims on or as soon as practicable after the Effective Date. Subsequent distributions to holders of Allowed General Unsecured Claims, Allowed Frascella Claim and Allowed Schubiger Claims will be made by the Disbursing Agent, in consultation with the Post-Conformation Committee, in Cash, following release of amounts from the Disputed Claims Reserves, the Bancorp Reserves or the NAB Escrow. Payment will be made in Cash or, if applicable, by way of setoff.

b. General Unsecured Claims Allowed after the Effective Date.[7]

For General Unsecured Claims Allowed on or after the Effective Date, the Disbursing Agent, in consultation with the Post-Conformation Committee, will make a distribution to the holder of such Allowed General Unsecured Claim after the Claim becomes an Allowed General Unsecured Claim. To the extent that such Claim is not satisfied in full pursuant to the initial distribution made on account of such Claim, the holder of such Claim will receive subsequent distributions following the release of amounts from the Disputed Claims Reserves, the Bancorp Reserves or the NAB Escrow. Payment will be made in Cash or, if applicable, by way of setoff.

4. Distributions Paid to Holders of Series B Preferred Stock Interests.

The Disbursing Agent, in consultation with the Post-Conformation Committee, will make an initial distribution to holders of Allowed Series B Preferred Stock Interests on or as soon as practicable after Cash is available to make such distribution after satisfaction, in full, of all Allowed Claims against the Debtor in higher Classes. As set forth above, if the Post Estimation Motion or the Motion to Dismiss is approved prior to the Effective Date, this initial distribution could be made as soon as practicable after the Effective Date. Subsequent distributions to holders of Allowed Series B Preferred Stock Interests will be made following release of amounts from the Disputed Claims Reserves, the Bancorp Reserves or the NAB Escrow. Payment will be made in Cash or, if applicable, by way of setoff.

[7] The Frascella Claims and the Schubiger Claims will be allowed prior to the Effective Date pursuant to the Settlement Agreement and the 9019 Motion.

5. Distributions Paid to Holders of Series A Preferred Stock Interests.

The Debtor does not believe that it will make any distributions on account of Series A Preferred Stock Interests because if enough Cash remains after satisfying Claims and Interests of a higher priority, the holder of Series A Preferred Stock Interests likely will convert or be deemed to convert his Series A Preferred Stock Interests to Common Stock Interests. In the event that he does not, the Disbursing Agent will make a distribution to the holder of the Allowed Series A Preferred Stock Interest on or as soon as practicable after Cash is available to make such distribution after satisfaction, in full, of all Allowed Series B Preferred Stock Interests in the Debtor and satisfaction of any Class 4 Transaction Retention Plan Claims. As set forth above, if the Post Estimation Motion or the Motion to Dismiss is approved prior to the Effective Date, this initial distribution could be made as soon as practicable after the Effective Date. Subsequent distributions to holders of Allowed Series A Preferred Stock Interests will be made, in the sole discretion of the Disbursing Agent, in Cash, following release of amounts from the Disputed Claims Reserves, the Bancorp Reserves or the NAB Escrow.

6. Distributions Paid to Holders of Common Stock Interests and Series C Preferred Stock Interests.

The Disbursing Agent will make an initial distribution to holders of Class 6 Interests in Cash on or as soon as practicable after Cash is available to make such distribution after satisfaction, in full, of all Allowed Series A Preferred Stock Interests in the Debtor and Class 4 Transaction Retention Plan Claims. As set forth above, if the Post Estimation Motion or the Motion to Dismiss is approved prior to the Effective Date, this initial distribution could be made as soon as practicable after the Effective Date. Subsequent distributions to holders of Allowed Class 6 Interests will be made, in the sole discretion of the Disbursing Agent as additional assets become available for distribution by the PPSI Liquidating Trust. Payment will be made in Cash or, if applicable, by way of setoff.

7. No Distributions on account of Disputed or Disallowed Claims or Interests.

Except as may otherwise be ordered by the Bankruptcy Court or authorized under the terms of the Plan, the Disbursing Agent will make no distribution to the holder of a Disputed Claim or Interest until the Disputed Claim or Interest becomes an Allowed Claim or Interest. The Disbursing Agent will not make Distributions to holders of disallowed Claims or Interests.

8. Setoff.

The Liquidating Trustee may, but shall not be required to, set off against any Claim or Interest, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim or Interest, claims of any nature whatsoever that the Debtor or the Liquidating Trustee may have against the holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the PPSI Liquidating Trust of any such claim that the Debtor or the PPSI Liquidating Trust may have against such holder. For the avoidance of doubt, any distribution due to Moyer on account of Claims or Interests held by Moyer shall be reduced by the Moyer Setoff Amounts. The holders

of Class 6 Interests, including Moyer or any successor in interest to Moyer's Claims against and Interests in the Estate or the Liquidating Trust Assets, shall be entitled to amounts withheld from Moyer on account of the Moyer Setoff Amounts to the extent that the Moyer Setoff Amounts are setoff against his Classes 5a, 5b or 6 distributions.

9. The Disputed Claims and Interests Reserve.

Prior to making any distribution to holders of Claims or Interests in Classes 3a-6, the Liquidating Trustee shall establish a separate Disputed Claims Reserve for Disputed Claims and Disputed Interests, each of which Disputed Claims Reserves shall be administered by the Liquidating Trustee. The Liquidating Trustee shall reserve in Cash or other property, for Distribution on account of each Disputed Claim or Disputed Interest, the full asserted amount (or such lesser amount as may be estimated or otherwise ordered by the Bankruptcy Court in accordance with Section 7.4 of the Plan or otherwise) with respect to each Disputed Claim.

10. Maintenance of the Disputed Claims Reserve and other Cash of the Debtor and the Estate.

Except as otherwise provided in the Plan, the Liquidating Trustee may hold Cash of the Estate in one or more accounts that the Liquidating Trustee determines to be in the best interests of the Estate. Any reference to the establishment or maintenance of any reserves contained in the Plan, including the Disputed Claims Reserves, will not require the Liquidating Trustee to establish separate deposit or similar accounts for such reserves. The establishment of reserves under the Plan may be accomplished by accounting, general ledger, paper, or other book entry, as the Liquidating Trustee may determine.

11. Finality of Distributions.

All Distributions made under the Plan are final, and none may seek disgorgement of any Distributions made under this Plan.

12. Manner of Payment; Delivery of Distributions.

Except as otherwise set forth in the Plan, the Disbursing Agent will make all Distributions under the Plan in Cash made by check drawn on a domestic bank or by wire transfer or ACH from a domestic bank.

13. Undeliverable Distributions.

If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Disbursing Agent is notified by, the Claims Agent or such holder of such holder's then current address, at which time all missed distributions shall be made, subject to Section 7.2(d) of the Plan, to such holder without interest. If any distribution is made by check and such check is not returned but remains uncashed for three (3) months after the date of such check, the Disbursing Agent may cancel and void such check, and the distribution with respect thereto shall be deemed undeliverable. If, pursuant to Section 7.7 of the

Plan, any holder is requested to provide an applicable Internal Revenue Service form or to otherwise satisfy any tax withholding requirements with respect to a distribution and such holder fails to do so within three (3) months of the date of such request, such holder's distribution shall be deemed undeliverable.

14. Fractional Amounts.

The Disbursing Agent may elect not to make Distributions of Cash in fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the Disbursing Agent may round the amount of such Distribution to the nearest dollar (up or down).

15. De Minimis Distributions.

The Disbursing Agent may elect not make a Distribution of less than $50.00 to any holder of an Allowed Claim or Interest unless the Distribution is a Final Distribution. If, at any time, the Liquidating Trustee determines that the remaining Cash and other Assets are not sufficient to make Distributions to holders of Allowed Claims and Interests in an amount that would warrant the PPSI Liquidating Trust incurring the cost of making such a Distribution, the Liquidating Trustee may dispose of such remaining Cash and other Assets in a manner the Liquidating Trustee deems to be appropriate.

16. Withholding and Reporting Requirements.

In connection with the Plan and all distributions thereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a distribution, the holder of an Allowed Claim or Allowed Interest complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder. Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim or Allowed Interest that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the applicable Disbursing Agent to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution to be held by the Disbursing Agent, as the case may be, until such time as the Disbursing Agent is satisfied with the holder's arrangements for any withholding tax obligations.

I. Injunctions and Limitations of Liability.

1. Injunction.

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions against the Debtor, the Committee, the Reorganized Debtor, the Post-Confirmation Committee, the PPSI Liquidating Trust, the Liquidating Trustee and their respective subsidiaries or their property on account of any such discharged Claims, debts, or liabilities or terminated Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee; or (v) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, or may hold, a Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, or liability that is released pursuant to Sections 10.5, 10.6 or 10.7 of the Plan are permanently enjoined from taking any of the following actions on account of such released Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities or terminated Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; or (iv) commencing or continuing any action, in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.

Without limiting the effect of the foregoing provisions of Section 10.8 of the Plan upon any Person, by accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in Section 10.8 of the Plan.

2. No Liability for Solicitation or Participation.

Pursuant to section 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or rejections of the Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer, issuance, sale, or purchase of securities.

3. Exculpation and Limitation of Liability.

To the fullest extent permitted by applicable law and approved in the Confirmation Order, none of the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the Liquidating Trustee, the Debtor's Professionals, the Committee, the Committee's Professionals, and any member of the Committee, solely acting in that capacity, the DIP Facility Lender, or any of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns), shall have or incur any liability to any holder of a Claim or an Interest, or any of their respective present or former directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions that are the result of fraud, criminal conduct, gross negligence, or willful misconduct or willful violation of federal or state securities laws or the Internal Revenue Code, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding any other provision of the Plan, to the fullest extent permitted by applicable law and approved in the Confirmation Order, no holder of a Claim or an Interest, no other party in interest, and none of their respective present or former directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, shall have any right of action against the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the Liquidating Trustee, the Debtor's Professionals, the Committee, the Committee's Professionals, and any member of the Committee, solely acting in that capacity, the DIP Facility Lender, or any of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, negotiation, or implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions that are the result of fraud, criminal conduct, gross negligence, or willful misconduct or willful violation of federal or state securities laws or the Internal Revenue Code.

4. Releases.

a. Releases by the Debtor

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the

Liquidating Trustee and any Person seeking to exercise the rights of the Debtor's Estate, including, without limitation, any successor to the Debtor or any Estate representative appointed or selected pursuant to Bankruptcy Code Section 1123(b)(3), shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including claims or causes of action arising under Chapter 5 of the Bankruptcy Code), and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence), whether direct or derivative, in connection with or related to the Debtor, the Chapter 11 Case, or the Plan (other than the rights of the Debtor, the Committee, the Reorganized Debtor, the Post-Confirmation Committee, the PPSI Liquidating Trust and the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date against (i) any of the directors and officers of the Debtor serving during the pendency of the Chapter 11 Case, (ii) any Professionals of the Debtor, (iii) the DIP Facility Lender, (iv) the members of the Committee, but only in their respective capacities on behalf of the Committee, (v) any Professional of the Committee, in their capacity as such, and (vi) any of the successors or assigns of any of the parties identified in the foregoing (i) through (v); provided, however, that nothing in Section 10.5(a) of the Plan shall be deemed to prohibit the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, causes of action or liabilities they may have against any of their employees, directors or officers that is based upon an alleged breach of a confidentiality, noncompete or any other contractual obligation owed to the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee.

b. Releases by Holders of Claims and Interests

As of the Effective Date, to the fullest extent permissible by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each holder of a Claim or Interest that affirmatively votes in favor of the Plan and does not execute an opt out shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence) against (i) any of the directors and officers of the Debtor serving during the pendency of the Chapter 11 Case, (ii) any Professionals of the Debtor, (iii) the DIP Facility Lender, (iv) the members of the Committee, but only in their respective capacities on behalf of the Committee, (v) any Professionals of the Committee, in their capacity as such, and (vi) any of the successors or assigns of any of the parties identified in the foregoing (i) through (v) (the Persons identified in clauses (i) through (v) collectively, the "Claimholder Releasees") in connection with or related to the Debtor, the Chapter 11 Case, or the Plan (other than the rights under the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed

or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date; *provided*, *however*, that nothing herein shall be deemed a waiver or release of a Claim or Interest holder's right to receive a distribution pursuant to the terms of the Plan or any obligation under the Plan or Confirmation Order. For the avoidance of doubt, this Release by holders of Claims and Interests is not and shall not be deemed a waiver of the Debtor's rights or claims against the holders of Claims and Interests, including to the Debtor's rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any such Claim, and all such rights, Litigation Rights, causes of action and claims are expressly reserved, except as otherwise provided in the Plan.

c. Releases by Transaction Retention Plan Claim Holders

In accordance with the terms of the Transaction Retention Plan, all holders of Transaction Retention Plan Claims shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence) against the Debtor, the PPSI Liquidating Trust, the Liquidating Trustee and the Reorganized Debtor and anyone affiliated with any of the foregoing; provided, however, that any Claim scheduled as undisputed or Filed Claims that were filed before the Bar Date are not released pursuant to Section 10.5(b)(ii) of the Plan. Section 10.5(b)(ii) of the Plan will be deemed to satisfy the requirement of the Transaction Retention Plan that the participants in the Transaction Retention Plan execute a release in order to receive benefits thereunder.

5. Release of Liens.

Except as otherwise provided in the Plan or the Confirmation Order, all Liens, security interests, deeds of trust, or mortgages against property of the Debtor or the Estate shall and shall be deemed to be released, terminated, and nullified on the Effective Date.

6. Cancellation of Instruments.

Unless otherwise provided for in the Plan, on the Effective Date, all Old Securities, including all promissory notes, instruments, indentures, agreements, or other documents evidencing, giving rise to, or governing any Claim against or Interest in the Debtor shall represent only the right, if any, to participate in the distributions contemplated by the Plan.

7. Authorization and Issuance of the New Common Stock.

On the Effective Date, the Reorganized Debtor shall issue 1 share of New Common Stock to the New Common Stockholder. The rights of the New Common Stockholder shall be as provided for in the Debtor Governing Documents.

J. Other Plan Matters.

1. Executory Contracts and Unexpired Leases.

a. Rejection of Executory Contracts and Unexpired Leases.

From and after the Effective Date, all Executory Contracts that exist between the Debtor and any Person, which have not previously been assumed, assumed and assigned, rejected, or are included in the Plan Supplement, will be deemed rejected pursuant to section 365 of the Bankruptcy Code. The Assumed Contracts listed in the Plan Supplement will be assumed effective on the Effective Date of the Plan. Entry of the Confirmation Order shall constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection or assumption, as appropriate, of such contracts rejected or assumed pursuant to the Plan.

b. Claims for Rejection Damages.

Proofs of Claim for damages allegedly arising from the rejection of any contract pursuant to the Plan must be filed with the Bankruptcy Court and served on the Liquidating Trustee not later than thirty (30) days after the Effective Date. All Proofs of Claim for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution under this Plan.

c. Objections to Proofs of Claim Based On Rejection Damages.

Objections to any Proof of Claim based on the rejection of an Executory Contract pursuant to the Plan may be made as otherwise set forth in the Plan.

2. Conditions Precedent to Confirmation.

The following are conditions precedent to Confirmation of the Plan: (i) an order pursuant to Bankruptcy Code Section 1125 shall have been entered finding that the Disclosure Statement contains adequate information; and (ii) the proposed Confirmation Order, or one substantially similar to it, shall have been submitted to the Court.

3. Conditions Precedent to the Effective Date.

The following are conditions precedent to the Effective Date of the Plan: (i) the Bankruptcy Court has entered the Confirmation Order in a form reasonably acceptable to the Plan Proponents; (ii) no stay of the Confirmation Order is in effect; (iii) all of the other actions needed to be taken or documents needed to be executed or approved to implement the Plan, as determined by the Debtor, have been taken, executed, or approved; (iv) the New Common Stockholder shall have accepted the New Common Stock; and (v) the fees required to be paid pursuant to Section 10.2 of the Plan shall have been paid.

4. Operations of the Debtor Between the Confirmation Date and the Effective Date

During the period from the Confirmation Date through and until the Effective Date, the Debtor shall continue to operate its business as debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all Final Orders.

5. Retention of Jurisdiction.

From and after the Effective Date, and notwithstanding the entry of the Confirmation Order, to the extent it has jurisdiction, the Bankruptcy Court shall retain exclusive jurisdiction of the Bankruptcy Case and all matters arising under, arising out of, or related to the Bankruptcy Case, the Plan, and the Confirmation Order to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim (whether a Filed Claim or Unfiled Claim) or Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the holder), including, without limitation, the resolution of any Request for Payment and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) hear and determine all applications for Professional Fees; *provided*, *however*, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Reorganized Debtor, the Post-Confirmation Committee or the PPSI Liquidating Trust shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(c) hear and determine all matters with respect to contracts or leases or the assumption or rejection of any contracts or leases to which a Debtor was a party or with respect to which the Debtor may be liable, including, if necessary and without limitation, the nature or amount of any required Cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case or the Litigation Rights;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including, without limitation,

disputes arising under agreements, documents, or instruments executed in connection with the Plan, *provided*, *however*, that any dispute arising under or in connection with the New Debtor Governing Documents shall be adjudicated in accordance with the provisions of the applicable document;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(l) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case or provided for under the Plan;

(m) except as otherwise limited herein, recover all assets of the Debtor and property of the Estate, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code Sections 346, 505, and 1146;

(o) hear and determine all disputes involving the existence, nature, or scope of the Debtor's discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and

(q) enter a final decree closing the Chapter 11 Case.

6. Post-Effective Date Reporting and Payment of Certain Fees.

The Plan provides that all fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable. From and after the Effective Date, the PPSI Liquidating Trust shall be liable for and shall pay the fees under 28 U.S.C. §1930 assessed against the Estate or the PPSI Liquidating Trust under 28 U.S.C. § 1930 until entry of a final decree closing the Bankruptcy Case. In addition, the Liquidating Trustee shall file post-confirmation quarterly reports or any pre-

confirmation monthly operating reports not filed as of the Confirmation Hearing in conformity with the U.S. Trustee guidelines, until entry of an order closing or converting the Bankruptcy Case.

7. Modification of the Plan.

The Plan Proponents may alter, amend, or modify the Plan pursuant to section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of holders of Claims or Interests under the Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, this Disclosure Statement, or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and intents of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

8. Revocation or Withdrawal of the Plan.

The Plan Proponents may revoke or withdraw the Plan at any time prior to the Confirmation Date. If the Plan Proponents revoke or withdraw the Plan prior to the Confirmation Date, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall be deemed to constitute a waiver or release of any claims by or against the Plan Proponents or any other Person or to prejudice in any manner the rights of the Plan Proponents or any Person in any further proceedings involving the Plan Proponents.

K. Miscellaneous Provisions.

1. Survival of the Final DIP Order

The terms and conditions of the Final DIP Order and protections afforded to the DIP Facility Lender in the Final DIP Order shall continue and survive beyond the Effective Date of the Plan.

2. Exemption from Transfer Taxes.

All transfers of assets made pursuant to the terms of the Plan shall be exempt from all stamp, transfer, and similar taxes within the meaning of section 1146(c) of the Bankruptcy Code, to the fullest extent permitted by law.

3. No Admissions.

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor with respect to any matter set forth in the Plan including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

4. Controlling Documents.

If there is an inconsistency or ambiguity between any term or provision contained in this Disclosure Statement and the Plan, the terms and provisions of the Plan shall control. To the extent there is an inconsistency or ambiguity between any term or provision contained in the Plan and the Confirmation Order, the terms and provisions of the Confirmation Order shall control.

5. Governing Law.

Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or other federal laws are applicable, the laws of the State of Delaware shall govern the construction, implementation, and enforcement of the Plan and all rights and obligations arising under the Plan, without giving effect to the principles of conflicts of law.

6. Successors and Assigns.

The rights, benefits and obligations of any Person named or referred to in the Plan will be binding upon, and will inure to the benefit of, the heir, executor, administrator, representative, successor, or assign of such Person.

7. Severability.

Should the Bankruptcy Court determine, on or prior to the Confirmation Date, that any provision of the Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim or Interest, the Bankruptcy Court may alter and modify such provision to make it valid and enforceable to the maximum extent practicable consistent with the original purpose of such provision. Notwithstanding any such determination, interpretation, or alteration, the remainder of the terms and provisions of the Plan shall remain in full force and effect.

8. Integration.

The Plan Supplement is incorporated in and is a part of the Plan as if set forth in full therein.

9. Binding Effect.

The Plan is binding on and inures to the benefit of (and detriment to, as the case may be) the Debtor and all holders of Claims or Interests (whether or not they have accepted this Plan) and their respective personal representatives, successors, and assigns.

10. Withholding and Reporting.

In connection with the Plan and all instruments issued in connection therewith and distributions thereunder, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all distributions

hereunder shall, to the extent applicable, be subject to any such withholding and reporting requirements. Notwithstanding anything in the Plan to the contrary, in calculating and making the payments under this Plan, the Liquidating Trustee may deduct from such payments any necessary withholding amount.

11. Other Documents and Actions.

Subject to the provisions of the Plan, the Liquidating Trustee or the Reorganized Debtor, as applicable, may execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements, and take such other action as is reasonable, necessary, or appropriate to effectuate the transactions provided for in the Plan, without any further action by or approval of the Bankruptcy Court.

12. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under Section 1101 and 1127(b) of the Bankruptcy Code.

ARTICLE V
FINANCIAL INFORMATION

The Debtor has filed the Schedules and monthly operating reports with the Bankruptcy Court. This financial information may be examined in the Bankruptcy Court Clerk's Office and is also available on the following website: http://www.llomnimgt.com/epx.

ARTICLE VI
CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors.

A. The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after notice, may conduct the Confirmation Hearing to consider Confirmation. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation.

B. Confirmation Standards

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Bankruptcy Code Section 1129(a) have been satisfied with respect to the Plan. The Debtor believes that: (i) the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of Chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good

faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of Bankruptcy Code Section 1129(a) set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.

- The Debtor has complied with the applicable provisions of the Bankruptcy Code.

- The Plan has been proposed in good faith and not by any means proscribed by law.

- Any payment made or promised by the Debtor or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

- The Debtor has disclosed or will have disclosed prior to the Confirmation Hearing (i) the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director or officer of the Reorganized Debtor or as the Liquidating Trustee or the lead individual working for or on behalf of the Liquidating Trustee, (ii) any affiliate of the Debtor participating in the Plan with the Debtor, or a successor to the Debtor under the Plan, and (iii) the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity holders and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider.

- With respect to each Impaired Class of Claims or Interests, each holder of an Impaired Claim or Impaired Interest either has accepted the Plan or will receive or retain under the Plan on account of such holder's Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.

- Except to the extent the Plan meets the "nonconsensual confirmation" standards of the Bankruptcy Code, each Class of Claims or Interests has either accepted the Plan or is not Impaired under the Plan. As set forth above, to the extent that any of the Impaired Classes votes to reject the Plan, the Debtor will request that the Bankruptcy Court confirm the Plan notwithstanding such rejection under the cramdown provisions of the Bankruptcy Code.

- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Claims, any DIP

Facility Claim, Priority Tax Claims and Other Priority Claims will be paid in full on the Distribution Date.

- At least one class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class.

- All fees payable under Section 1930 of Title 28 have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

C. Best Interests Test/Liquidation Analysis

As described above, Section 1129(a)(7) of the Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor was liquidated under Chapter 11 of the Bankruptcy Code. Because substantially all of the Liquidating Trust Assets,[8] the assets available for distribution to the Debtor's creditors and Shareholders, have already been liquidated to Cash, the value of any distributions if the Debtor's Chapter 11 Case was converted to a case under Chapter 7 of the Bankruptcy Code would be less than the value of distributions under the Plan. This is because conversion of the Chapter 11 Case to a Chapter 7 case would require the appointment of a Chapter 7 trustee, and in turn, such Chapter 7 trustee's likely retention of new professionals. The "learning curve" that the trustee and new professionals would be faced with comes at a significant cost to the Estate and with a significant delay compared to the time of distributions under the Plan. Worse still, a Chapter 7 trustee would be entitled to approximately $900,000, which is a percentage of the distributions of the already monetized assets[9] made to creditors and Stockholders. Accordingly, a portion of the Cash currently available for distribution to holders of Claims and Interests would instead be paid to the Chapter 7 trustee.

As a result, the Debtor believes that the estate would have fewer funds to be distributed in a hypothetical Chapter 7 liquidation than it would if this Plan is confirmed, and therefore holders of Claims and Interests in all Impaired Classes will recover less or, in some Classes, the same (but in no case more) in the hypothetical Chapter 7 case. Accordingly, the Debtor believes that the "best interests" test of Bankruptcy Code Section 1129 is satisfied.

D. Feasibility

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For the purposes of whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its obligations under the Plan. The Debtor believes that the Liquidating Trustee will be able to make all payments required under the Plan. Moreover, the

[8] The only non-liquidated assets are retained causes of action, which can be litigated as easily (and, due to the Chapter 7 trustee fee, less expensively) through the PPSI Liquidating Trust as in a Chapter 7 case).

[9] This percentage was calculated from the proceeds of the Sale that have not already been distributed and excludes a percentage of any potential amounts that could be recovered from litigation as such amounts are not monetized at this time.

Reorganized Debtor has the same ability to operate its limited business after Confirmation as it did before. Therefore, Confirmation is not likely to be followed by liquidation or the need for further reorganization.

E. Confirmation Without Acceptance by All Impaired Classes

The Bankruptcy Court may confirm a plan of reorganization over the rejection or deemed rejection of the plan of reorganization by a class of claims or interests if the plan of reorganization "does not discriminate unfairly" and is "fair and equitable" with respect to such class. The Plan Proponents believe this Plan meets the test.

1. No Unfair Discrimination

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair". The Plan does not discriminates unfairly against any Impaired Class of Claims or Interests. Indeed, each holder of an unsecured Claim will receive equal treatment, and holders of Interests will receive distributions in the order of priority set forth in the Debtor's organizational documents. The settlements approved prior to or as part of the Plan settle disputes within a range of reasonableness and do not unfairly discriminate.

2. Fair and Equitable Test

This test applies to Classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no Class of Claims or Interests receive more than 100% of the amount of the allowed Claims or Interests in such Class. As to the dissenting class, the test sets different standards depending on the type of claims against or interests in the debtor in such Class. In order to demonstrate that a plan is fair and equitable, the plan proponent must demonstrate:

• Secured Creditors: Each holder of a secured claim either (1) retains its liens on the property, to the extent of the allowed amount of its secured claim and receives deferred cash payments having a value, as of the effective date of the Chapter 11 plan, of at least the allowed amount of such claim, (2) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof), or (3) receives the "indubitable equivalent" of its allowed secured claim.

• Unsecured Creditors: Either (1) each holder of an impaired unsecured claim receives or retains under the Chapter 11 plan property of a value equal to the amount of its allowed claim or (2) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the Chapter 11 plan.

• Equity Interests: Either (1) each holder of an interest will receive or retain under the Chapter 11 plan property of a value equal to the greatest of the fixed liquidation preference (if any) to which such holder is entitled, the fixed redemption price (if any) to which such holder is

entitled, or the value of the interest or (2) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the Chapter 11 plan.

The Debtors believe the Plan satisfies the "fair and equitable" requirement because all of the foregoing requirements have been met, there is no Class of equal priority receiving more favorable treatment, and no holder of a lower class recovers anything until higher classes are paid in full.

ARTICLE VII
ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Plan Proponents believe that confirmation of the Plan represents the best mechanism for expediting a prompt distribution of the Debtor's assets to holders of Claims and Interests. The alternatives to confirmation of the Plan include (a) development of an alternative plan, (b) dismissal of the Bankruptcy Case, or (c) conversion of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code. The Debtor believes that each of these alternatives is inferior to confirmation of the Plan.

The Plan substantially, though not wholly, implements the rights that creditors and holders of Interests would otherwise have under a non-bankruptcy distribution of the Debtor's assets. As discussed above, the Plan proposes settlements of certain issues. These settlements either (a) substantially track the likely outcome of litigation, or (b) compromise matters, thereby avoiding risk and expense such that holders of Claims and Interests will be made better off. The Debtor does not believe that there are any other reasonable alternative and better plan structures, because the only way to achieve a theoretically superior result for certain Classes would be to litigate rather than settle with key constituencies, but that theoretically superior result must be discounted due to the risks it entails and the substantial litigation costs that would erode any potential benefit. Another alternative plan would simply introduce delay and added expense for little, or no, benefit. Therefore, the Debtor believes that pursuing an alternative plan is not appropriate.

Dismissal of the bankruptcy case is also an inferior alternative. Dismissal would, among other things, (a) eliminate the efficacy of the Bar Date Order, the Final DIP Order's provisions concerning the Bancorp DIP Reserve, any order approving the 9019 Motion, and all other orders reducing Proofs of Claims, thereby creating considerable risks and added costs; (b) cause the automatic stay to terminate; and (c) eliminate a forum for contesting Claims. Therefore, dismissal of the Chapter 11 Case provides no benefit and is not an appropriate alterative to the Plan.

Conversion of this case to a case under chapter 7 also is an inferior alternative. Conversion of this case to a case under chapter 7 would result in the appointment of a chapter 7 trustee and, likely, the retention of new professionals. The Chapter 7 trustee also would be entitled to a percentage fee for distributions. The costs alone of replacing the Debtor's current fiduciary and professionals would be disproportionate and unnecessary. Furthermore, the

flexibility of the plan process, as described in this Disclosure Statement, makes confirmation of the Plan more efficient and effective than conversion of this case to chapter 7.

ARTICLE VIII
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The confirmation and execution of the Plan may have tax consequences to holders of Claims and Interests. The Plan Proponents do not offer an opinion as to any federal, state, local, or other tax consequences to holders of Claims and Interests as a result of the confirmation of the Plan. All holders of Claims and Interests are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of the Plan. **This Disclosure Statement is not intended, and should not be construed, as legal or tax advice to any Creditor, Interest holder, or other party in interest.**

ARTICLE IX
CONCLUSION AND RECOMMENDATION

The Plan Proponents believe that confirmation of the Plan is in the best interests of all holders of Interests and urge all holders of Interests in Classes 3a, 3b, 3c, 5a, 5b and 6 to vote to accept the Plan and to evidence such acceptance by returning their Ballots to the Claims Agent at the address set forth above so that they will actually be received on or before 5:00 p.m., prevailing Eastern Time, [●], 2015.

Dated: December 23, 2014

/s/ Michael E. Jacoby
Michael E. Jacoby
Chief Restructuring Officer
Phoenix Payment Systems, Inc.

/s/ Wojciech F. Jung
Lowenstein Sandler LLP, as counsel to the Committee

EXHIBIT DS-1

[PLAN OF REORGANIZATION]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Phoenix Payment Systems, Inc.	)	Case No. 14-11848 (MFW)
Debtor.	)	

JOINT PLAN OF REORGANIZATION OF PHOENIX PAYMENT SYSTEMS, INC. PROPOSED BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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Dated: December 23, 2014

THE DISCLOSURE STATEMENT WITH RESPECT TO THIS PLAN OF REORGANIZATION HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE DEBTOR HAS SEPARATELY NOTICED A HEARING TO CONSIDER THE ADEQUACY OF THE DISCLOSURE STATEMENT UNDER BANKRUPTCY CODE SECTION 1125. THE PLAN PROPONENTS RESERVE THE RIGHT TO MODIFY OR SUPPLEMENT THIS PLAN OF REORGANIZATION AND THE ACCOMPANYING DISCLOSURE STATEMENT PRIOR TO AND UP TO THE DATE OF SUCH HEARING.

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PLAN OF REORGANIZATION OF PHOENIX PAYMENT SYSTEMS, INC.

INTRODUCTION

Phoenix Payment Systems, Inc. (the "**Debtor**") and the Committee (as defined herein) hereby propose this plan of reorganization (the "**Plan**") pursuant to Section 1121(a) of the Bankruptcy Code. Reference is made to the disclosure statement distributed contemporaneously herewith (the "**Disclosure Statement**") for a discussion of the Debtor's history, business, property, results of operations, projections for future operations and risk factors, and a summary and analysis of the Plan and certain related matters.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith and approved by the Bankruptcy Court, have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejection of this Plan. All parties entitled to vote to accept or reject the Plan are encouraged to read the Disclosure Statement and Plan in their entirety before voting.

ARTICLE I

RULES OF CONSTRUCTION AND DEFINITIONS

1.1 Rules of Construction

(a) For purposes of the Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms used in the Plan and not otherwise defined in the Plan shall have the meanings ascribed to them in Section 1.2 of the Plan. Any capitalized term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

(b) Whenever the context requires, terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

(c) Any reference in the Plan to (i) a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, or as otherwise specified in this Plan, and (ii) an existing document, exhibit, or other agreement means such document, exhibit, or other agreement as it may be amended, modified, or supplemented from time to time, as the case may be, and as in effect at any relevant point.

(d) Unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan.

(e) The words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan.

(f) Captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan.

(g) The rules of construction set forth in Bankruptcy Code Section 102 and in the Bankruptcy Rules shall apply.

(h) References to a specific article, section, or subsection of any statute, rule, or regulation expressly referenced herein shall, unless otherwise specified, include any amendments to or successor provisions of such article, section, or subsection.

(i) In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.2 Definitions

(a) "**9019 Motion**" means the motion that the Debtor intends to file pursuant to Bankruptcy Rule 9019 with the Bankruptcy Court seeking approval of the Settlement Agreement.

(b) "**Administrative Claim**" means a Claim for payment of an administrative expense of a kind specified in Bankruptcy Code Sections 503(b) and entitled to priority pursuant to Bankruptcy Code Section 507(a)(2), including (i) the actual, necessary costs and expenses of preserving the Estate and operating the business of the Debtor after the commencement of the Chapter 11 Case, (ii) Professional Fee Claims, (iii) all fees and charges assessed against the Estate under Section 1930 of Title 28 of the United States Code, (iv) Cure payments for contracts and leases that are assumed under Bankruptcy Code Section 365 that have not been previously paid before the Effective Date, and (v) Claims pursuant to Section 503(b)(9) of the Bankruptcy Code.

(c) "**Allowed**" means when used with respect to (A) a Claim, all or any portion of a Claim that either (i) is not Disputed, (ii) has been allowed by a Final Order, or (iii) is allowed pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan; or (B) an Interest, an Interest held in the name, kind and amount set forth in the records of the Debtor that is either (i) not Disputed or (ii) has been allowed by a Final Order, *provided*, *however*, that all Allowed Claims and Allowed Interests shall remain subject to all limitations set forth in the Bankruptcy Code, including, in particular, Sections 502 and 510, as applicable. Except as specifically provided for in the Plan, the Confirmation Order or a Final Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, and therefore, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or other penalties.

(d) "**Asset Purchase Agreement**" means the Asset Purchase Agreement, dated as of July 31, 2014, made by and between the Debtor and the Purchaser.

(e) "**Assumed Contract**" means any contract or agreement other than an Indemnification Obligation assumed by the Debtor pursuant to Section 6.3 of the Plan, including, without limitation, those contracts and agreements listed in the Plan Supplement.

(f) "**Bancorp**" means The Bancorp Bank, together with its parents, subsidiaries, affiliates, officers, directors, members, employees, agents, representatives, attorneys, and professionals.

(g) "**Bancorp AMEX Reserve**" means the reserve held by Bancorp on account of the Debtor's letter of credit for the benefit of American Express.

(h) "**Bancorp Claim**" means the Claim existing under the Bancorp Credit Agreements.

(i) "**Bancorp Credit Agreements**" means the Prepetition Credit Documents and the Processing Agreements, as each term is defined in the Final DIP Order.

(j) "**Bancorp DIP Reserve**" means the reserve fund, initially in the amount of $2.5 million, established from the proceeds of the Sale and held by Bancorp for possible distribution to Bancorp pursuant to Section 10.3 of the DIP Credit Agreement if any such obligation is Allowed. The Bancorp DIP Reserve shall be closed and extinguished on the later of (i) when Bancorp withdraws amounts in satisfaction of Claims arising under Section 10.3 of the DIP Credit Agreement or (ii) twenty-four months after the close of the Sale (October 2016).

(k) "**Bancorp HELOC Reserve**" means the reserve fund held by Bancorp on account of the Debtor's guaranty of Moyer's home equity line of credit.

(l) "**Bancorp Interchange Reserve**" means the reserve fund held by Bancorp on account of the Debtor's obligations under that certain Interchange Agreement, made by and between the Debtor and Bancorp.

(m) "**Bancorp Reserves**" means collectively, the Bancorp DIP Reserve, the Bancorp HELOC Reserve, the Bancorp AMEX Reserve and the Bancorp Interchange Reserve. Upon closure of the Bancorp Reserves, all Cash or other property held in the Bancorp Reserves that have not been paid to Bancorp or otherwise disbursed pursuant to the terms of the underlying agreements with respect to any such Reserves shall become the property of the PPSI Liquidating Trust and used to pay the fees and expenses of the PPSI Liquidating Trust as and to the extent set forth in the Liquidating Trust Agreement, and thereafter distributed to holders of Allowed Claims and Interests.

(n) "**Bankruptcy Code**" means Sections 101 *et seq.*, of title 11 of the United States Code, as now in effect or hereafter amended and applicable to the Chapter 11 Case.

(o) "**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Case or any aspect thereof.

(p) "**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure, as now in effect or hereafter amended and applicable to the Chapter 11 Case.

(q) "**Beneficiaries**" means holders of Allowed Claims and Interests entitled to receive distributions from the Liquidating Trust Assets under the Plan.

(r) "**Business Day**" means any day, excluding Saturdays, Sundays, or "legal holidays" (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York, New York.

(s) "**Cash**" means legal tender of the United States or equivalents thereof.

(t) "**Chapter 11 Case**" means the voluntary case commenced on August 4, 2014 under Chapter 11 of the Bankruptcy Code by the Debtor in the Bankruptcy Court.

(u) "**Claim**" means a claim as such term is defined in Bankruptcy Code Section 101(5) against the Debtor, whether arising before or after the Petition Date and specifically including an Administrative Claim.

(v) "**Claims Agent**" means Rust Consulting/Omni Bankruptcy.

(w) "**Claim Objection Deadline**" means the last day for filing objections to Claims in the Bankruptcy Court, which shall be the latest of (i) sixty (60) days after the Effective Date, (ii) sixty (60) days after the applicable Proof of Claim or Request for Payment is filed (except as otherwise provided in Section 10.1 of the Plan), and (iii) such other later date as is established by order of the Bankruptcy Court upon motion of the Liquidating Trustee. The Liquidating Trustee, in consultation with the Post-Confirmation Committee, may, in its discretion, move to extend the Claim Objection Deadline at any time prior to the expiration of the Claim Objection Deadline.

(x) "**Claims Register**" means the official claims registers in the Debtor's Chapter 11 Case maintained by the Claims Agent on behalf of the Clerk of the Bankruptcy Court.

(y) "**Class**" means a category of holders of Claims or Interests, as described in Article II of the Plan.

(z) "**Committee**" means the official committee of unsecured creditors formed by the Office of the United States Trustee for the District of Delaware on August 19, 2014 to serve in the Chapter 11 Case.

(aa) "**Common Stockholders**" means the holders of the Phoenix Common Stock.

(bb) "**Common Stock Interest**" means (i) any Interests in the Debtor that are based upon or arise from Phoenix Common Stock and (ii) any Claims against the Debtor that are based upon or arise from Phoenix Common Stock and are subordinated pursuant to Bankruptcy Code Section 510(b); *provided, however,* that a Claim arising from Indemnification Obligations that are assumed under Section 6.5 of the Plan shall not be considered a Common Stock Interest.

(cc) "**Confirmation**" means confirmation of the Plan by the Bankruptcy Court pursuant to Bankruptcy Code Section 1129.

(dd) "**Confirmation Date**" means the date of entry by the clerk of the Bankruptcy Court of the Confirmation Order.

(ee) "**Confirmation Hearing**" means the hearing to consider Confirmation of the Plan under Bankruptcy Code Section 1128.

(ff) "**Confirmation Order**" means the order entered by the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code Section 1129.

(gg) "**Cure**" means, in connection with the assumption of an executory contract or unexpired lease, pursuant to and only to the extent required by Bankruptcy Code Section 365(b), (i) the distribution within a reasonable period of time following Effective Date of Cash or such other property (A) as required under the terms of the applicable executory contract or lease, (B) other than as required under the terms of the applicable executory contract or lease, as may be agreed upon by the counterparties and the Debtor, or (C) as may be ordered by the Bankruptcy Court or determined in such manner as the Bankruptcy Court may specify; and/or (ii) the taking of such other actions (A) as required under the terms of the applicable executory contract or lease, (B) other than as required under the terms of the applicable executory contract or lease, as may be agreed upon by the counterparties and the Debtor, or (C) as may be ordered by the Bankruptcy Court or determined in such manner as the Bankruptcy Court may specify.

(hh) "**Debtor**" means Phoenix Payment Systems, Inc., including in its capacity as a debtor in possession pursuant to Bankruptcy Code Sections 1107 and 1108.

(ii) "**DIP Claim**" means any Claim existing under the DIP Facility, other than the DIP Indemnified Liabilities Claim and the DIP Enforcement Indemnity Claim.

(jj) "**DIP Credit Agreement**" means that certain Senior Secured Debtor-in-Possession Credit and Security Agreement, dated as of July 31, 2014, made by and between the Debtor and Bancorp.

(kk) "**DIP Enforcement Indemnity Claim**" means the Claims arising pursuant to the enforcement indemnification set forth in Section 10.3(k)(ii) of the DIP Credit Agreement.

(ll) "**DIP Facility**" means the postpetition debtor in possession credit facility provided to the Debtor by Bancorp pursuant to the DIP Credit Agreement.

(mm) "**DIP Facility Claim**" means the DIP Claim, the DIP Enforcement Indemnity Claim and the DIP Indemnified Liabilities Claim.

(nn) "**DIP Facility Lender**" means Bancorp.

(oo) "**DIP Indemnified Liabilities Claim**" means the indemnification Claims set forth in Section 10.3(a)-(k)(i) and (l) of the DIP Credit Agreement.

(pp) "**Disbursing Agent**" means the Liquidating Trustee and/or any other Person(s) designated by (i) the Debtor on or before the Effective Date or (ii) the Liquidating Trustee in its sole discretion after the Effective Date to serve as a disbursing agent under the Plan, subject to the provisions of Section 7.2 of the Plan.

(qq) "**Disclosure Statement**" means the written disclosure statement that relates to the Plan, as amended, supplemented, or otherwise modified from time to time, and that is prepared, approved and distributed in accordance with Bankruptcy Code Section 1125 and Bankruptcy Rule 3018.

(rr) "**Disputed**" means any (A) Claim or portion thereof which (i) was scheduled as "disputed" in the Schedules or (ii) is subject to an objection filed prior to the Claim Objection Deadline which has not yet been resolved by settlement or Final Order; or (B) Interest that (i) was listed as "disputed" on the Rule 1007 List or (ii) was set forth in a filed Proof of Interest in name, kind and amount different than as set forth in the records of the Debtor, as reflected in the Rule 1007 List.

(ss) "**Disputed Claims Reserve**" means the reserve fund created pursuant to Section 7.1 of the Plan.

(tt) "**Distribution Date**" means, subject to the provisions of Section 7.1 of the Plan, the later of (a) the Effective Date, (b) the date such Claim or Interest becomes an Allowed Claim or Allowed Interest, or (c) as soon as practicable following a determination by the Disbursing Agent, in the Disbursing Agent's discretion in consultation with the Post-Confirmation Committee, that that there is sufficient Cash to make a distribution to the holder of such Claim or Interest pursuant to the terms of this Plan; *provided*, *however*, that in each case a later date may be established by order of the Bankruptcy Court upon motion of the Debtor, the Liquidating Trustee, or any other party; and that there may be one or more Distributions Dates for Allowed Claims or Allowed Interests.

(uu) "**Distribution Record Date**" means the record date for determining entitlement to receive distributions under the Plan on account of Allowed Claims and Allowed Interests, which date shall be the Business Day immediately preceding the Effective Date, at 5:00 p.m. prevailing Eastern time on such Business Day.

(vv) **"DWF"** means DWF Investments, LLC.

(ww) "**Effective Date**" means the Business Day upon which all conditions to the consummation of the Plan as set forth in Section 8.2 of the Plan have been satisfied or waived as provided in Section 8.3 of the Plan, and is the date on which the Plan becomes effective.

(xx) "**Estate**" means the estate of the Debtor in the Chapter 11 Case, created pursuant to Bankruptcy Code Section 541.

(yy) "**Filed Claim**" means a Claim evidenced by a Proof of Claim or Request for Payment, as applicable.

(zz) "**Final DIP Order**" means the *Final Order (I) Authorizing the Debtor (A) To Obtain Postpetition Financing on a Senior Secured [Basis] and Granting Priming Liens and (B) To Utilize Cash Collateral; (II) Granting Adequate Protection to the DIP Lender; and (III) Granting Related Relief* [Docket No. 149], entered by the Bankruptcy Court on September 3, 2014.

(aaa) "**Final Order**" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, or the docket of any such other court, the operation or effect of which has not been stayed, reversed, or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or seek review or rehearing or leave to appeal has expired and as to which no appeal, petition for certiorari or petition for review or rehearing was filed or, if filed, remains pending or as to which any right to appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing by all Persons possessing such right, or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or from which reargument or rehearing was sought or certiorari has been denied, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; *provided*, *however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules may be filed with respect to such order shall not cause such order not to be a Final Order.

(bbb) "**Frascella**" means Frascella Capital, LLC.

(ccc) "**Frascella Claim**" means any Claim or Interest of any kind held by any one or more of the Frascella Entities.

(ddd) "**Frascella Entities**" means DWF, Frascella, Larry Frascella, David Frascella and any Person related to or affiliated with any of the foregoing.

(eee) "**General Bar Date Order**" means the *Order Establishing the Deadline for Filing Proofs of Claim and Proofs of Interest and Approving the Form and Manner of Notice Thereof* [Docket No. 250], entered by the Bankruptcy Court on September 23, 2014.

(fff) "**General Bar Date**" means October 24, 2014 at 11:59 p.m. (prevailing Eastern Time), as established in the General Bar Date Order.

(ggg) "**General Unsecured Claim**" means a Claim that is not an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, a Secured Claim, a Transaction Retention Plan Claim, a Frascella Claim, a Schubiger Claim or any Claim that constitutes a Preferred Stock Interest or a Common Stock Interest. This definition specifically includes, without limitation, Rejection Damages Claims, if any.

(hhh) "**Governmental Bar Date**" means February 2, 2015 at 11:59 p.m. (prevailing Eastern Time), as established in the General Bar Date Order for each and every governmental unit (as such term is defined in 11 U.S.C. § 101(27)).

(iii) "**Impaired**" means, with respect to any Claim or Interest, that such Claim or Interest is impaired within the meaning of Bankruptcy Code Section 1124.

(jjj) "**Indemnification Obligation**" means any obligation of the Debtor to indemnify, reimburse, or provide contribution pursuant to by-laws, articles or certificates of incorporation, contracts, or otherwise, to the fullest extent permitted by applicable law.

(kkk) "**Interest**" means the legal, equitable, contractual, or other rights of any Person (i) with respect to Phoenix Common Stock or Phoenix Preferred Stock, or (ii) to acquire or receive any of such Interests.

(lll) "**JEMS**" means JEMS Venture Capital, LLC.

(mmm) "**Lien**" means a lien as such term is defined in Bankruptcy Code Section 101(37).

(nnn) "**Liquidating Trust Agreement**" means that certain agreement made by an among the Debtor, as depositor, the Liquidating Trustee, and Delaware Trust Company, as the Delaware Statutory Trustee, establishing and delineating the terms and conditions of the PPSI Liquidating Trust, substantially in the form to be filed as part of the Plan Supplement.

(ooo) "**Liquidating Trust Assets**" means all assets of the Debtor or the Estate, other than the Reorganized Debtor Assets, as of the Effective Date. Without limitation, the Liquidating Trust Assets include (a) all Cash on hand, (b) all proceeds of the Sale, (c) any claim, right or interest of the Debtor in any deposit, prepayment, refund, rebate, abatement or other recovery for Taxes, (d) the Litigation Rights, (e) the Debtor's interests in and rights to the assets in the Bancorp Reserves and the NAB Escrow, (f) all proceeds of any of the foregoing and all proceeds of any of the foregoing received by any person or entity on or after the Effective Date, (g) all of the Debtor's books and records to the extent the same are not purchased assets under the Asset Purchase Agreement and (h) the attorney-client privilege related or incidental to the assets identified in the foregoing (a) - (g) above as well as those items designated as Liquidating Trust Assets in the immediately following sentence. In addition, the Liquidating Trust Assets include all rights under and payments or causes of action, if any, owing to the Debtor from (i) the Asset Purchase Agreement, (ii) the Sale Order, and (iii) any other order of the Bankruptcy Court, as well as payments or causes of action, if any, owing to the Debtor under the Processor Agreement and the MSA that relate to periods prior to the Effective Date. For the avoidance of doubt, the Liquidating Trust Assets do not include (i) the MSA, (ii) the Processor Agreement, and (iii) payments under the Processor Agreement relating to periods after the Effective Date.

(ppp) "**Liquidating Trust Expenses**" means the fees and expenses of the Liquidating Trustee and the Post-Confirmation Committee, without limitation, professional fees and expenses.

(qqq) "**Liquidating Trustee**" means the entity appointed in accordance with the Liquidating Trust Agreement and Section 5.8 of the Plan to administer the PPSI Liquidating Trust.

(rrr) "**Litigation Rights**" means the claims, rights of action, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtor or its Estate may hold against any Person, which are to be retained by the PPSI Liquidating Trust pursuant to Section 5.11 of the Plan, including, without limitation, claims or causes of action arising under or pursuant to Chapter 5 of the Bankruptcy Code and its state law equivalents. For the avoidance of doubt, Litigation Rights do not include any cause of action acquired by the Purchaser pursuant to the Asset Purchase Agreement.

(sss) **"Moyer"** means Raymond Moyer.

(ttt) "**Moyer Setoff Amounts**" means amounts owed by Moyer to the Debtor by virtue of (a) the Debtor's payment of the mortgage on Moyer's residence under the Debtor's guarantee to Bancorp; (b) amounts the Debtor loaned or advanced to Moyer or payments made by the Debtor on Moyer's behalf; (c) payments made by the Debtor on account of claims which a court or an

arbitration panel has found joint and several liability between Moyer and the Debtor; and (d) any other amount which the Debtor has a legal right to set off against Claims or Interests of Moyer.

(uuu) "**MSA**" means that certain Management Services Agreement, dated as of October 23, 2014, made by and between the Debtor and the Purchaser.

(vvv) "**NAB**" means North American Bancard, LLC.

(www) "**NAB Escrow**" means the $1 million escrow fund held by the Escrow Holder (as defined in the Asset Purchase Agreement) which was established from the proceeds of the Sale.

(xxx) "**New Board**" means the Board of Directors of the Reorganized Debtor.

(yyy) "**New Common Stock**" means the new common share of the Reorganized Debtor to be authorized and/or issued to the New Common Stockholder under Section 5.4 of the Plan, with the rights of the holder thereof to be as provided for in the New Debtor Governing Documents.

(zzz) "**New Common Stockholder**" means SM Financial Services Corporation.

(aaaa) "**New Debtor By-laws**" means the by-laws of the Reorganized Debtor substantially in the form included in the Plan Supplement.

(bbbb) "**New Debtor Charter**" means the certificate of incorporation of the Reorganized Debtor substantially in the form included in the Plan Supplement, which shall include the terms of the New Common Stock.

(cccc) "**New Debtor Governing Documents**" means the New Debtor Charter and the New Debtor By-laws.

(dddd) "**Old Securities**" means the Phoenix Preferred Stock, the Phoenix Common Stock and any promissory notes held by any creditor.

(eeee) "**Other Priority Claim**" means a Claim against the Debtor entitled to priority pursuant to Bankruptcy Code Section 507(a), other than a Priority Tax Claim or an Administrative Claim.

(ffff) "**Other Secured Claims**" means Secured Claims excluding the Bancorp Claim.

(gggg) "**Person**" means any person, individual, firm, partnership, corporation, trust, association, company, limited liability company, joint stock company, joint venture, governmental unit, or other entity or enterprise.

(hhhh) **"Petition"** means the petition for relief commencing the Chapter 11 Case.

(iiii) "**Petition Date**" means August 4, 2014, the date on which the Debtor filed its Petition.

(jjjj) "**Phoenix Common Stock**" means, collectively, any common equity in the Debtor outstanding prior to the Effective Date, as evidenced by those certain Stock Purchase Agreements, entered into by the Debtor and the Common Stockholders and that certain Settlement Agreement and Releases, dated as of April 5, 2013, made by and among Christopher Good, Moyer and the Debtor. The term **"Phoenix Common Stock"** further includes, without limitation, any stock option or other right to purchase the common stock of the Debtor, together with any warrant, conversion right, restricted stock unit, right of first refusal, subscription, commitment, agreement, or other right to acquire or receive any such common stock in the Debtor that have been fully exercised prior to the Effective Date.

(kkkk) "**PPSI Liquidating Trust**" means the trust established pursuant to the Liquidating Trust Agreement.

(llll) "**Phoenix Preferred Stock**" means, collectively, Phoenix Series A Preferred Stock, Phoenix Series B-1 Preferred Stock, Phoenix Series B-2 Preferred Stock, the Phoenix Warrant for Series B-3 Preferred Stock, Phoenix Series B-4 Preferred Stock, and Phoenix Series C Preferred Stock, provided, however, that any Phoenix Preferred Stock that has been converted to Phoenix Common Stock shall be treated solely as Phoenix Common Stock. The term **"Phoenix Preferred Stock"** further includes, without limitation, any stock option or other right to purchase the preferred stock of the Debtor, together with any warrant, conversion right, restricted stock unit, right of first refusal, subscription, commitment, agreement, or other right to acquire or receive any such preferred stock in the Debtor that have been fully exercised prior to the Effective Date.

(mmmm) "**Phoenix Series A Preferred Stock**" means Series A preferred equity in the Debtor outstanding prior to the Effective Date.

(nnnn) "**Phoenix Series B-1 Preferred Stock**" means Series B-1 preferred equity in the Debtor outstanding prior to the Effective Date.

(oooo) "**Phoenix Series B-2 Preferred Stock**" means Series B-2 preferred equity in the Debtor outstanding prior to the Effective Date.

(pppp) "**Phoenix Series B-4 Preferred Stock**" means, collectively, any Series B-4 preferred equity in the Debtor outstanding prior to the Effective Date.

(qqqq) "**Phoenix Series C Preferred Stock**" means Series C preferred equity in the Debtor outstanding prior to the Effective Date.

(rrrr) "**Phoenix Warrant for Series B-3 Preferred Stock**" means that certain Phoenix Payment Systems, Inc. Warrant to Purchase Shares of Preferred Stock, issued on March 1, 2013 to Wollmuth Maher & Deutsch LLP by the Debtor to purchase from the Debtor fully paid and non assessable shares of the Debtor's Series B-3 preferred stock.

(ssss) "**Plan**" means this plan of reorganization under Chapter 11 of the Bankruptcy Code and all implementing documents contained in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time.

(tttt) "**Plan Supplement**" means the supplement to the Plan, which may be filed in parts pursuant to Section 5.13 of the Plan, containing, without limitation, (i) the announcement of any change in the name of the Reorganized Debtor, (ii) identification of the members of the New Board as designated by the Debtor and the officers of the Reorganized Debtor, (iii) the New Debtor Governing Documents, (iv) the list of executory contracts and unexpired leases to be assumed pursuant to Section 6.3 of the Plan, (v) the Liquidating Trust Agreement, and (vi) the list of actions in which the PPSI Liquidating Trust retains Litigation Rights.

(uuuu) "**POST**" means POST Integrations, Inc. and Ebocom, LLC.

(vvvv) "**Post-Confirmation Committee**" means the post-confirmation committee formed on the Effective Date upon the dissolution of the Committee and composed of all of the Committee members serving as of the Effective Date.

(wwww)"**Preferred Stockholders**" means the holders of the Phoenix Preferred Stock.

(xxxx) "**Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b). The term "**Preferred Stock Interests**" includes Series A Preferred Stock Interests, Series B-1 Preferred Stock Interests, Series B-2 Preferred Stock Interests, the Warrant for Series B-3 Preferred Stock Interests, Series B-4 Preferred Stock Interests, and Series C Preferred Stock Interests.

(yyyy) "**Priority Tax Claim**" means a Claim that is entitled to priority pursuant to Bankruptcy Code Section 507(a)(8).

(zzzz) "**Processor Agreement**" means that certain Processor Agreement, dated as of October 23, 2014, made by and between the Debtor and NAB.

(aaaaa) "**Professional**" means any professional retained in the Chapter 11 Case by order of the Bankruptcy Court, whether by the Debtor or the Committee, excluding any of the Debtor's ordinary course professionals.

(bbbbb) "**Professional Fee Claim**" means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services rendered after the Petition Date and prior to and including the Effective Date, subject to any limitations imposed by order of the Bankruptcy Court.

(ccccc) "**Pro Rata**" means, at any time, the proportion that the amount of a Claim or Interest in a particular Class or Classes (or portions thereof, as applicable) bears to the aggregate amount of all Claims or Interests (including Disputed Claims or Interests), as applicable, in such Class or Classes, unless the Plan provides otherwise.

(ddddd) "**Proof of Claim**" means a Proof of Claim filed in accordance with the Bar Date Order.

(eeeee) "**Proof of Interest**" means a Proof of Interest filed in accordance with the Bar Date Order.

(fffff) "**Purchaser**" means EPX Acquisition Company, LLC, an affiliate of NAB.

(ggggg) "**Rejection Damages Claim**" means a Claim arising from the Debtor's rejection of a contract or lease, which Claim shall be limited in amount by any applicable provision of the Bankruptcy Code, including, without limitation, Bankruptcy Code Section 502, subsection 502(b)(6) thereof with respect a Claim of a lessor for damages resulting from the rejection of a lease of real

property, subsection 502(b)(7) thereof with respect to a Claim of an employee for damages resulting from the rejection of an employment contract, or any other subsection thereof.

(hhhhh) "**Reorganized Debtor**" means the reorganized Debtor or its successor on or after the Effective Date.

(iiiii) "**Reorganized Debtor Assets**" means (i) the MSA, (ii) the Processor Agreement, (iii) payments due, if any, under the MSA; (iv) payments due under the Processor Agreement after the Effective Date, and (iv) the assets required for the Reorganized Debtor to perform under the MSA and the Processor Agreement, including the Debtor's rights and privileges arising under or related to the Assumed Contracts and the attorney-client privilege related or incidental to the Assumed Contracts. For the avoidance of doubt, the Assumed Contracts which comprise Reorganized Debtor Assets shall not include any contract, agreement, arrangement or other document relating to the Indemnification Obligations, provided also that the Reorganized Debtor Assets do not include the Liquidating Trust Assets.

(jjjjj) "**Request for Payment**" means a request for payment of an Administrative Claim filed with the Bankruptcy Court in connection with the Chapter 11 Case.

(kkkkk) **"Rule 1007 List"** means the *Amended List of Equity Security Holders* [Docket No. 135].

(lllll) "**Sale**" means the sale of substantially all of the Debtor's assets to the Purchaser which was approved by the Bankruptcy Court on September 23, 2014 and consummated on October 23, 2014.

(mmmmm) "**Sale Order**" means the *Order Authorizing and Approving (1) the Sale of Substantially All of the Debtor's Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related Relief* [Docket No. 249], as entered by the Bankruptcy Court on September 23, 2014.

(nnnnn) "**Schedules**" means the Debtor's Schedules of Assets and Liabilities filed with the Bankruptcy Court on September 2, 2014 [Docket No. 129], and any amendments thereto.

(ooooo) "**Schubiger**" means Michael Schubiger.

(ppppp) "**Schubiger Claim**" means any Claim or Interest of any kind held by the Schubiger Entities.

(qqqqq) "**Schubiger Entities**" means Schubiger, JEMS and Person related to or affiliated with any of the foregoing.

(rrrrr) "**Secured Claim**" means a Claim (i) that is secured by a Lien on property in which the Estate has an interest, which lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law, or a Claim that is subject to a valid right of the creditor of setoff against amounts owed to the Debtor; (ii) to the extent of the value of the holder's interest in the Estate's interest in such property or to the extent of the amount subject to a valid right of setoff, as applicable; and (iii) the amount of which (A) is undisputed by the Debtor or (B) if disputed by the Debtor, such dispute is settled by written agreement between the Debtor or the Liquidating Trustee and the holder of such Claim or determined, resolved, or adjudicated by final, nonappealable order of a court or other tribunal of competent jurisdiction.

(sssss) "**Series A Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Series A Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Series A Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b).

(ttttt) "**Series B Preferred Stock Interest**" means, collectively, the Series B-1 Preferred Stock Interests, the Series B-2 Preferred Stock Interests, the Warrants for Series B-3 Preferred Stock Interests and the Series B-4 Preferred Stock Interests.

(uuuuu) "**Series B-1 Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Series B-1 Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Series B-1 Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b).

(vvvvv) "**Series B-2 Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Series B-2 Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Series B-2 Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b).

(wwwww) "**Series B-4 Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Series B-4 Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Series B-4 Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b).

(xxxxx) "**Series C Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from Phoenix Series C Preferred Stock and (ii) any Claims that are based upon or arise from Phoenix Series C Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b).

(yyyyy) "**Settlement Agreement**" means the settlement agreement expected to be entered into by and between the Debtor, Frascella, DWF, JEMS and Moyer memorializing the terms of a resolution between the parties thereto with respect to Claims asserted by Frascella, DWF and JEMS against the Debtor.

(zzzzz) "**Stockholders**" means the Common Stockholders and the Preferred Stockholders.

(aaaaaa) "**Taxes**" means (a) any taxes and assessments imposed by any Governmental Body, including net income, gross income, profits, gross receipts, license, employment, stamp, occupation, premium, alternative or add-on minimum, ad valorem, real property, personal property, transfer, real property transfer, value added, sales, use, environmental (including taxes under Code Section 59A), customs, duties, capital stock, franchise, excise, withholding, social security (or similar), unemployment, disability, payroll, fuel, excess profits, windfall profit, severance, estimated or other tax, including any interest, penalty or addition thereto, whether disputed or not, and any expenses incurred in connection with the determination, settlement or litigation of the Tax liability, (b) any obligations under any agreements or arrangements with respect to Taxes described in clause (a) above, and (c) any transferee liability in respect of Taxes described in clauses (a) and (b) above or payable by reason of assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

(bbbbbb) "**Transaction Retention Plan**" means that certain Phoenix Payment Systems, Inc. Transaction Retention Plan, as approved by the Debtor's board of directors on February 23, 2012.

(cccccc) "**Transaction Retention Plan Claim**" means a Claim arising under the Transaction Retention Plan.

(dddddd) "**Unfiled Claim**" means a Claim as to which no Proof of Claim or Request for Payment has been filed.

(eeeeee) "**Unimpaired**" means, with respect to any Claim, that such Claim is not impaired within the meaning of Bankruptcy Code Section 1124.

(ffffff) "**Warrant for Series B-3 Preferred Stock Interest**" means, collectively, (i) any Interests that are based upon or arise from the Phoenix Warrant for Series B-3 Preferred Stock and (ii) any Claims that are based upon or arise from the Phoenix Warrant for Series B-3 Preferred Stock and are subordinated pursuant to Bankruptcy Code Section 510(b). To the extent that a Phoenix Warrant for Series B-3 Preferred Stock has not been exercised within the period set forth in the Phoenix Warrant for Series B-3 Preferred Stock, it shall not be an Allowed Interest.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 Introduction

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. A Claim or Interest may be and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes.

2.2 Unclassified Claims

In accordance with Bankruptcy Code Section 1123(a)(1), Administrative Claims, DIP Facility Claims, and Priority Tax Claims have not been classified.

2.3 Unimpaired Classes of Claims

The following Classes contain Claims that are not Impaired by the Plan, are deemed to accept the Plan, and are not entitled to vote on the Plan.

Class 1: Other Priority Claims

Class 2a: Bancorp Claim

Class 2b: Other Secured Claims

Class 4: Transaction Retention Plan Claims

2.4 Impaired Voting Classes of Claims and Interests

The following Class contains Interests that are Impaired by the Plan and are entitled to vote on the Plan.

Class 3a: General Unsecured Claims

Class 3b: Frascella Claims

Class 3c: Schubiger Claims

Class 5a: Series B Preferred Stock Interests

Class 5b: Series A Preferred Stock Interests

Class 6: Common Stock Interests and Series C Preferred Stock Interests

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

3.1 Unclassified Claims

(a) Administrative Claims

With respect to each Allowed Administrative Claim, except as otherwise provided for in Section 10.1 of the Plan, on the applicable Distribution Date, the holder of each such Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (A) Cash equal to the unpaid portion of such Allowed Administrative Claim or (B) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing; *provided*, *however*, that Allowed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Case shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

(b) DIP Facility Claim

Any Allowed DIP Facility Claim shall be a fully Secured Claim under section 506(a) of the Bankruptcy Code and the Final DIP Order, without offset, counterclaim or any defense by the Debtor whatsoever. On the applicable Distribution Date, the DIP Facility Lender shall:

(i) with respect to any Allowed DIP Claim, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed DIP Claim. the holder shall receive (A) payment of such Allowed DIP Facility Claim in Cash or (B) such different treatment as to which the DIP Facility Lender and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(ii) with respect to any Allowed DIP Indemnified Liabilities Claim arising prior to the Effective Date, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed DIP Indemnified Liabilities Claim, receive (A) payment of such Allowed Indemnified Liabilities Claim in Cash or (B) such different treatment as to which the DIP Facility Lender and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(iii) with respect to any Allowed DIP Indemnified Liabilities Claim arising after the Effective Date, in full satisfaction, settlement, release, discharge of and in exchange for such Allowed DIP Indemnified Liabilities Claim, receive solely from the Bancorp DIP Reserve (A) payment of such Allowed DIP Indemnified Liabilities Claim or (B) such different treatment as to which the DIP Facility Lender and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(iv) with respect to any Allowed DIP Enforcement Indemnity Claim, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed DIP Enforcement Indemnity Claim, receive solely from the Bancorp DIP Reserve (A) payment of such Allowed DIP Enforcement Indemnity Claim or (B) such different treatment as to which the DIP Facility Lender and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

Notwithstanding anything contained herein, the liens or other security interests in favor of the DIP Facility Lender on account of the DIP Facility Claim shall continue in (i) the Bancorp Reserves, (ii) the contingent indemnification obligations subject to and in accordance with Section 10.3 of the DIP Credit Agreement, and (iii) the Lender Expenses (as defined in the DIP Credit

Agreement), and shall not be released until such time as all obligations to the DIP Facility Lender under the DIP Credit Agreement and Final DIP Order have been fully satisfied.

(c) Priority Tax Claims

Each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, as shall have been determined by the Debtor or by the Liquidating Trustee, either (i) on the applicable Distribution Date, Cash equal to the due and unpaid portion of such Allowed Priority Tax Claim, (ii) treatment in a manner consistent with Bankruptcy Code Section 1129(a)(9)(C), or (iii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. For the avoidance of doubt, any Claim for Taxes arising from or triggered by the Sale shall be the sole and exclusive obligation of the Debtor or the PPSI Liquidating Trust and not of the Reorganized Debtor, the Purchaser or the New Common Stockholder; and any tax assessment relating to periods after the Effective Date shall be the responsibility of the Reorganized Debtor rather than the Debtor or the PPSI Liquidating Trust.

3.2 Unimpaired Classes of Claims

(a) Class 1: Other Priority Claims

On the applicable Distribution Date, each holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim, either (i) Cash equal to the unpaid portion of such Allowed Other Priority Claim or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(b) Class 2a: Bancorp Claim

Bancorp holds an Allowed Secured Claim in the amount of $2,233,304.00 as of October 23, 2014, plus additional interest, fees, and costs, as accruing pursuant to the Bancorp Credit Agreements. The amount set forth in the prior sentence shall be and is Allowed without offset, counterclaim or any defense whatsoever, as a fully Secured Claim under Section 506(a) of the Bankruptcy Code and the Final DIP Order. The Bancorp Claim is separate from, and in addition to, any DIP Facility Claim that Bancorp, as the DIP Facility Lender, may be entitled to under the DIP Facility.

On the applicable Distribution Date, Bancorp shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Bancorp Claim, either (i) Cash equal to the amount of the Bancorp Claim or (ii) such different treatment as to which Bancorp and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Upon satisfaction in full of the Bancorp Claim, any corresponding Liens of Bancorp with respect to the Bancorp Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes, except for (i) the Bancorp Reserves, (ii) the contingent indemnification obligations subject to and in accordance with Section 10.3 of the DIP Credit Agreement and (iii) the Lender Expenses (as defined in the DIP Credit Agreement).

(c) Class 2b: Other Secured Claims

On the applicable Distribution Date, each holder of an Allowed Other Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Secured Claim, either (i) Cash equal to the amount of such Allowed Other Secured Claim or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

Upon satisfaction in full of each Allowed Other Secured Claim, the corresponding Lien shall be released, deemed null and void, and unenforceable for all purposes. Nothing in the Plan shall preclude the Debtor or the Liquidating Trustee from challenging the validity of any Lien on any asset of the Debtor or the value of the property that secures any alleged Lien.

(d) Class 4: Transaction Retention Plan Claims

On the applicable Distribution Dates, each holder of an Allowed Transaction Retention Plan Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Transaction Retention Plan Claim, either (i) Cash equal to the percentage of the amounts that would have been paid to Stockholders as set forth in the Transaction Retention Plan with respect to such holder or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

3.3 Impaired Voting Classes of Claims and Interests

(a) Class 3a: General Unsecured Claims

On the applicable Distribution Dates, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed General Unsecured Claim, either (i) a Pro Rata

share of the Cash available for distribution to Classes 3a-c after the satisfaction of the Unclassified Claims, the Other Priority Claims, the Bancorp Claim and the Other Secured Claims; or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(b) Class 3b: Frascella Claims

On the applicable Distribution Dates, each holder of an Allowed Frascella Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Frascella Claim, the treatment specified in the 9019 Motion and the Settlement Agreement.

(c) Class 3c: Schubiger Claims

On the applicable Distribution Dates, each holder of an Allowed Schubiger Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Schubiger Claim, the treatment specified in the 9019 Motion and the Settlement Agreement.

For the avoidance of doubt, the holders of Claims in Classes 3a-c shall share Pro Rata pursuant to the following formula:

$$\frac{\text{Cash available for distribution to Claims in Classes 3a-c}}{\text{Claims in Classes 3a-c}}$$

(d) Class 5a: Series B Preferred Stock Interests

On the applicable Distribution Dates, each holder of an Allowed Series B Preferred Stock Interest that has not or is not deemed to have exercised conversion rights, if any, shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Series B Preferred Stock Interest, either (i) a Pro Rata share of the Cash available for distribution after satisfaction of Claims in Class 4, at the fixed liquidation preference or redemption price, if any, of such Allowed Series B Preferred Stock Interest or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(e) Class 5b: Series A Preferred Stock Interests

On the applicable Distribution Dates, each holder of an Allowed Series A Preferred Stock Interest that has not or is not deemed to have exercised conversion rights, if any, shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Series A Preferred Stock Interest, either (i) a Pro Rata share of the Cash available for distribution after full satisfaction of Interests in Class 5a and Claims in Class 4 at the fixed liquidation preference or redemption price, if any, of such Allowed Series A Preferred Stock Interest or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

(f) Class 6: Common Stock Interests and Series C Preferred Stock Interests

On the applicable Distribution Date, each holder of an Allowed Common Stock Interest and an Allowed Series C Preferred Stock Interest shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Common Stock Interest or Allowed Series C Preferred Stock Interest, either (i) its Pro Rata share of the remaining Cash of the Estate and the PPSI Liquidating Trust after the distribution to the holders of Claims in Class 4 and Interests in Classes 5a and 5b or (ii) such different treatment as to which such holder and the Debtor or the Liquidating Trustee, as applicable, shall have agreed upon in writing. Section 7.8 relating to setoff shall apply in all respects to the holders of allowed Class 6 Interests. For the avoidance of doubt, Series C Preferred Stock Interest holders shall not receive any special rights beyond Common Stockholder Interests because no such special rights were triggered under the applicable certificate of designation.

3.4 Reservation of Rights Regarding Claims and Interests

Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtor's, the Reorganized Debtor's, the PPSI Liquidating Trust's or the Liquidating Trustee's rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment. Similarly, nothing herein shall prejudice or be deemed to prejudice creditors' rights of setoff or recoupment.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

4.1 Impaired Classes Entitled to Vote

Holders of Claims and Interests in the Impaired Classes of Claims and Interests are each entitled to vote as a Class to accept or reject the Plan. Accordingly, the votes of holders of Interests in Classes 3a, 3b, 3c, 5a, 5b and 6 shall be solicited with respect to the Plan.

4.2 Acceptance by an Impaired Class

In accordance with Bankruptcy Code Section 1126(c), and except as provided in Bankruptcy Code Section 1126(e), the Impaired Classes of Claims shall have accepted the Plan if the Plan is accepted by the 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 such Class that have timely and properly voted to accept or reject the Plan. In accordance with Bankruptcy Code Section 1126(d), and except as provided in Bankruptcy Code Section 1126(e), the Impaired Classes of Interests shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount of the Allowed Interests of such Class that have timely and properly voted to accept or reject the Plan.

4.3 Presumed Acceptances by Unimpaired Classes

Claims and Interests in Classes 1, 2a, 2b and 4 are Unimpaired under the Plan. Under Bankruptcy Code Section 1126(f), holders of such Unimpaired Claims and Interests are conclusively presumed to have accepted the Plan, and the votes of such Unimpaired Claim and Interest holders shall not be solicited.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 Continued Corporate Existence

The Reorganized Debtor shall continue to exist as of and after the Effective Date as a legal entity, in accordance with the applicable laws of the State of Delaware and pursuant to the New Debtor Governing Documents. The Reorganized Debtor reserves the right to change its name, with any such name change to be acceptable to the Debtor, to be announced in the Plan Supplement and to be effective upon the Effective Date.

5.2 Certificate of Incorporation and By-laws

The certificate of incorporation and by-laws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among other things, pursuant to Bankruptcy Code Section 1123(a)(6), a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by Bankruptcy Code Section 1123(a)(6) and limited as necessary to facilitate compliance with applicable non-bankruptcy federal laws governing foreign ownership of the Debtor. The certificate of incorporation and by-laws of the Debtor, as amended, shall constitute the New Debtor Governing Documents. The New Debtor Governing Documents shall be in substantially the forms of such documents included in the Plan Supplement and shall be in full force and effect as of the Effective Date.

5.3 Cancellation of Interests

On the Effective Date, all Old Securities, including all promissory notes, stock, instruments, warrants, certificates and other documents evidencing the Preferred Stock Interests and the Common Stock Interests shall be deemed automatically cancelled and surrendered and shall be of no further force in accordance with Section 7.6 of the Plan, and the obligations of the Debtor thereunder or in any way related thereto, including any obligation of the Debtor to pay any franchise or similar type taxes on account of such Interests, shall be discharged.

5.4 Authorization and Issuance of the New Common Stock

(a) On the Effective Date, the Reorganized Debtor shall issue 1 share of New Common Stock to the New Common Stockholder.

(b) The rights of the holder of New Common Stock shall be as provided for in the New Debtor Governing Documents.

5.5 Directors and Officers of Reorganized Debtor

(a) Upon the Effective Date, the New Board shall consist of one (1) member, as identified in the Plan Supplement; provided, however, that the Plan Supplement may list more than one director, in which case, the New Board shall consist of all listed members. Thereafter, the New Board shall serve in accordance with the New Debtor Governing Documents.

(b) Upon the Effective Date, the officers of the Reorganized Debtor shall be the officers set forth in the Plan Supplement.

(c) All officers and directors of the Debtor not listed in the Plan Supplement will be deemed to have resigned on the Effective Date.

(d) As of the Effective Date, that certain engagement letter, dated February 3, 2014, by and between the Debtor and PMCM, LLC, pursuant to which the chief restructuring officer was retained by the Debtor, is terminated, with the effect of such termination being as set forth in the underlying documents.

5.6 Corporate Action; Effectuating Documents

(a) On the Effective Date, the adoption and filing of the New Debtor Governing Documents and all actions contemplated by the Plan shall be authorized and approved in all respects pursuant to the Plan. All matters provided for herein involving the corporate structure of the Debtor or the Reorganized Debtor, and any corporate action required by the Debtor, the Reorganized Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the stockholders or directors of the Debtor or the Reorganized Debtor, and shall be fully authorized pursuant to Section 303 of the Delaware General Corporation Law.

(b) Any director, chief executive officer, president, chief financial officer, senior vice president, general counsel or other appropriate officer of the Reorganized Debtor shall be authorized to execute, deliver, file, or record the documents included in the Plan Supplement and such other contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Any director, secretary or assistant secretary of the Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions. All of the foregoing is authorized without the need for any required approvals, authorizations, or consents except for express consents required under the Plan.

5.7 Revesting of Reorganized Debtor Assets

Except as otherwise provided herein, the Reorganized Debtor Assets shall revest in the Reorganized Debtor on the Effective Date. Thereafter, the Reorganized Debtor may operate its business and may use, acquire, and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, or Bankruptcy Court approval. Except as specifically provided in the Plan or the Confirmation Order, as of the Effective Date, all property of the Reorganized Debtor shall be free and clear of all Claims and Interests, and all Liens with respect thereto. For the avoidance of doubt, the Liquidating Trust Assets shall not revest in the Reorganized Debtor. Such assets shall vest in the PPSI Liquidating Trust pursuant to Section 5.9 of the Plan.

5.8 Appointment of the Liquidating Trustee

PMCM 2, LLC shall be appointed as the Liquidating Trustee. Delaware Trust Company shall serve as the Delaware Statutory Trustee. PMCM 2, LLC is expected to have Michael E. Jacoby as its designated officer for the purposes of administering the PPSI Liquidating Trust. To the extent PMCM 2, LLC declines or is unable to serve, the Debtor, in consultation with the Committee, shall appoint another Liquidating Trustee on or prior to the Confirmation Date. The Liquidating Trustee shall serve accordance with the Liquidating Trust Agreement and the Plan.

5.9 The PPSI Liquidating Trust

(a) On the Effective Date, the PPSI Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, *inter alia*, (a) administering the Liquidating Trust Assets, (b) resolving and/or litigating Disputed Claims, (c) pursuing or determining not to pursue actions preserved pursuant to the Litigation Rights, and (d) making all distributions to the Beneficiaries provided for under the Plan. The PPSI Liquidating Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation Article 301.7701-4(d).

(b) On the Effective Date, the Liquidating Trust Assets shall vest automatically in the PPSI Liquidating Trust. The Plan shall be considered a motion pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for such relief. The transfer of the Liquidating Trust Assets to the PPSI Liquidating Trust shall be made for the benefit and on behalf of the Beneficiaries. The assets comprising the Liquidating Trust Assets will be treated for tax purposes as being transferred by the Debtor to the Beneficiaries pursuant to the Plan in exchange for their Allowed Claims and then by the Beneficiaries to the PPSI Liquidating Trust in exchange for the beneficial interests in the PPSI Liquidating Trust. The Beneficiaries shall be treated as the grantors and owners of the PPSI

Liquidating Trust. Upon the transfer of the Liquidating Trust Assets, the PPSI Liquidating Trust shall succeed to all of the Debtor's rights, title and interest in the Liquidating Trust Assets, and the Debtor will have no further interest in or with respect to the Liquidating Trust Assets.

(c) On the Effective Date, the Liquidating Trustee, and not the Reorganized Debtor, shall be deemed the Estates' representative in accordance with Section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under Sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules to act on behalf of the PPSI Liquidating Trust, including without limitation, the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (2) liquidate the Liquidating Trust Assets; (3) prosecute, settle, abandon or compromise any actions relating to the Litigation Rights; (4) make distributions as contemplated hereby, (5) establish and administer any necessary reserves for Disputed Claims that may be required; (6) object to the Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such Disputed Claims; (7) employ and compensate professionals and other agents, provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets, to the extent not inconsistent with the status of the PPSI Liquidating Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes; and (8) control attorney/client privilege relating to or arising from the Liquidating Trust Assets.

(d) Except as otherwise ordered by the Bankruptcy Court, the Liquidating Trust Expenses on or after the Effective Date shall be paid in accordance with the Liquidating Trust Agreement without further order of the Bankruptcy Court.

(e) The PPSI Liquidating Trust shall file annual reports regarding the liquidation or other administration of property comprising the Liquidating Trust Assets, the distributions made by it and other matters required to be included in such report in accordance with the Liquidating Trust Agreement. In addition, the PPSI Liquidating Trust will file tax returns as a grantor trust pursuant to United States Treasury Regulation Article 1.671-4(a).

5.10 Insurance

The PPSI Liquidating Trust may maintain director and officer insurance coverage, and for a tail period of 3 years, for those Persons covered by any such policies in effect during the pendency of the Chapter 11 Case, continuing after the Effective Date, insuring such Persons in respect of any claims, demands, suits, causes of action, or proceedings against such Persons based upon any act or omission related to such Person's service with, for, or on behalf of the Debtor (whether occurring before or after the Petition Date). Such policies shall be fully paid and noncancellable. If not purchased by the Debtor before the Effective Date, on or after the Effective Date, the PPSI Liquidating Trust shall purchase director and officer insurance covering the period on or after the Effective Date.

5.11 Preservation of Rights of Action; Resulting Claim Treatment

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Section 10.5(a) hereof, the PPSI Liquidating Trust and the Liquidating Trustee shall retain and may enforce all rights to commence and pursue, as appropriate, any and all causes of action in which the Debtor or the Estate has Litigation Rights, whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated in the Plan Supplement, and the PPSI Liquidating Trust and the Liquidating Trustee's rights to commence, prosecute, or settle such causes of action shall be preserved notwithstanding the occurrence of the Effective Date. The PPSI Liquidating Trust and the Liquidating Trustee may pursue such causes of action, as appropriate, in accordance with the best interests of the PPSI Liquidating Trust and the Beneficiaries. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any cause of action against it as any indication that the Debtor, PPSI Liquidating Trust or the Liquidating Trustee, as applicable, will not pursue any and all available causes of action against it. The Debtor, PPSI Liquidating Trust or the Liquidating Trustee, as applicable, expressly reserve all rights to prosecute any and all causes of action against any Person, except as otherwise expressly provided in the Plan or pursuant to the terms of the Asset Purchase Agreement.** Unless any causes of action against any Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order (including, but not limited to, the Final DIP Order), the Debtor, the PPSI Liquidating Trust and the Liquidating Trustee expressly reserve all causes of action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such causes of action upon, after, or as a consequence of the Confirmation or consummation of the Plan.

In accordance with section 1123(b)(3) of the Bankruptcy Code, any causes of action in which the Debtor has Litigation Rights that the Debtor may hold against any Person shall vest in the PPSI Liquidating Trust. The PPSI Liquidating Trust or the Liquidating Trustee, through their authorized agents or representatives, and in consultation with the Post-Confirmation Committee shall retain and may exclusively enforce any and all such causes of action. The PPSI Liquidating Trust and the Liquidating Trustee, in consultation with the Post-Confirmation Committee, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such causes of action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

5.12 Exemption From Certain Transfer Taxes

Pursuant to Bankruptcy Code Section 1146(a), any transfers from the Debtor to the PPSI Liquidating Trust or any other Person pursuant to, in contemplation of, or in connection with the Plan, and the issuance, transfer, or exchange of any debt, equity securities or other interest under or in connection with the Plan, shall not be taxed under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or government assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan, including the documents contained in the Plan Supplement and all documents necessary to evidence and implement any of the transactions and actions described in the Plan or the Plan Supplement.

5.13 Plan Supplement

The Plan Supplement may be filed in parts either contemporaneously with the filing of the Plan or from time to time thereafter, but in no event later than one (1) week prior to the deadline established by the Bankruptcy Court for objecting to the Disclosure Statement. After filing, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. The Plan Supplement also will be available for inspection on (a) the website maintained by the Claims Agent: http://www.omnimgt.com/epx, and (b) the Bankruptcy Court's website: http://www.deb.uscourts.gov. In addition, holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request in accordance with Section 10.15 of the Plan.

5.14 Committee

Upon the Effective Date, the Committee shall dissolve automatically, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to (i) obligations arising under confidentiality agreements which shall remain in full force and effect according to their terms; (ii) applications for Professional Fee Claims; and (iii) any motions or other actions seeking enforcement or implementation of the provisions of this Plan, the Confirmation Order or the Liquidating Trust Agreement. Professionals retained by the Committee or the Debtor shall be entitled to compensation for services rendered and Professionals retained by the Committee or the Debtor and the members of the Committee shall be entitled to reimbursement of expenses incurred after the Effective Date in connection with applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed after the Effective Date.

5.15 Post-Confirmation Committee

(a) On the Effective Date, the Committee shall be reconstituted as the Post-Confirmation Committee, with all of its members and retained Professionals. The bylaws previously adopted by the Committee shall continue to govern the actions of the Post-Confirmation Committee, and the fiduciary duties, including rights to immunity, that applied to the Committee prior to the Effective Date shall apply to the Post-Confirmation Committee, including those set forth in Bankruptcy Code sections 1102 and 1103. These bylaws may be amended from time to time by the Post-Confirmation Committee in its discretion.

(b) The Post-Confirmation Committee shall have the duties set forth herein to help implement this Plan and to maximize distributions to holders of Claims, including those duties set forth in the Liquidating Trust Agreement.

(c) The duties and powers of the Post-Confirmation Committee shall terminate on the later to occur of (i) the settlement or other resolution of all Disputed Claims on a final basis, except for the Disputed Claim filed by POST and those Claims set forth in the Plan Supplement and (ii) the payment of the final distributions to all creditors in Classes 3a-3c pursuant to the Plan, except for the Disputed Claim filed by POST and those Claims set forth in the Plan Supplement. Upon termination of its duties in connection with this Section 5.15(c) and satisfaction of all requests for payment of outstanding expenses of the members of the Post-Confirmation Committee, including outstanding fees and expenses of Professionals of the Post-Conformation Committee, the Post-Confirmation Committee will automatically dissolve without any further action needed to effectuate such dissolution. Any provision in this Plan that provides for consultation with the Committee or the Post-Confirmation Committee requires no consultation upon the Post-Confirmation Committee's dissolution.

(d) The Post-Confirmation Committee shall retain and be deemed to have retained the Committee Professionals on the Effective Date. All reasonable fees and expenses of the Post-Confirmation Committee Professionals shall be borne by the PPSI Liquidating Trust and paid by the Liquidating Trustee within thirty (30) days after submission of an invoice unless the Liquidating Trustee objects to reasonableness prior to the 30th day.

ARTICLE VI

TREATMENT OF CONTRACTS AND LEASES

6.1 Rejection of Contracts and Leases

On the Effective Date, except for the executory contracts and unexpired leases listed on the Plan Supplement, if any, and except to the extent that a Debtor either previously has assumed, assumed and assigned or rejected an executory contract or unexpired lease by an order of the Bankruptcy Court, including, but not limited to, the Sale Order, or has filed a motion to assume or assume and assign an executory contract or unexpired lease prior to the Effective Date, each executory contract and unexpired lease entered into by the Debtor prior to the Petition Date that has not previously expired or terminated pursuant to its own terms will be deemed rejected pursuant to section 365 of the Bankruptcy Code. Each such contract and lease will be rejected only to the extent that any such contract or lease constitutes an executory contract or unexpired lease. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of any such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code and that the rejection thereof is in the best interest of the Debtor, its Estate and all parties in interest in the Chapter 11 Case.

6.2 Claims Based of Rejection of Executory Contracts of Unexpired Leases

Claims created by the rejection of executory contracts and unexpired leases pursuant to this Section 6.1 of the Plan, or the expiration or termination of any executory contract or unexpired lease prior to the Effective Date, must be filed with the Bankruptcy Court and served on the Liquidating Trustee no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Section 6.1 for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, the Estate, its successors and assigns, and its assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in Section 10.6. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III of the Plan.

6.3 Assumption of Contracts and Leases

(a) Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtor shall assume each of the respective executory contracts and unexpired leases, if any, listed as Assumed Contracts in the Plan Supplement; provided, however, that the Debtor reserves the right, at any time prior to the Effective Date, to amend the Plan Supplement to: (a) delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant hereto; or (b) add any executory contract or unexpired lease to the Plan Supplement, thus providing for its assumption pursuant to this Section 6.3. The Debtor shall provide notice of any amendments to the Plan Supplement to the parties to the executory contracts or unexpired leases affected thereby and to the parties on the then-applicable service list in the Chapter 11 Case. Nothing herein or in the Plan Supplement shall constitute an admission by the Debtor that any contract or lease is an executory contract or unexpired lease or that a Debtor has any liability thereunder.

(b) Each executory contract or unexpired lease assumed under this Section 6.3 shall include any modifications, amendments, supplements or restatements to such contract or lease.

6.4 Payments Related to the Assumption of Executory Contracts and Unexpired Leases

Any Cure Claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Claim in Cash on or after the Effective Date; or (2) on such other terms as are agreed to by the parties to such executory contract or unexpired lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is an unresolved dispute regarding: (1) the amount of any Cure Claim; (2) the ability of the Reorganized Debtor to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the resolution of such dispute by the parties or the entry of a Final Order resolving the dispute and approving the assumption.

6.5 Certain Indemnification Obligations

(a) Indemnification Obligations owed to those of the Debtor's directors and officers serving on and after the Petition Date shall survive the Effective Date of the Plan and remain unaffected by the Plan, irrespective of whether obligations are owed in connection with a prepetition or postpetition occurrence. To the extent necessary, such obligations shall be deemed to be, and shall be treated as though they are, contracts that are assumed pursuant to Bankruptcy Code Section 365 under the Plan, and such Indemnification Obligations (subject to any defenses thereto).

(b) Indemnification Obligations owed to any of the Debtor's Professionals pursuant to Bankruptcy Code Sections 327 or 328 and order of the Bankruptcy Court, whether such Indemnification Obligations relate to the period before or after the Petition Date, shall be deemed to be, and shall be treated as though they are, contracts that are assumed pursuant to Bankruptcy Code Section 365 under the Plan.

6.6 Extension of Time to Assume or Reject

Notwithstanding anything set forth in Article VI of the Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the Debtor's right to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed rejection provided for in Section 6.1 of the Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Debtor following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Determination of Allowability of Claims and Interests and Rights to Distributions

(a) Only holders of Allowed Claims and Allowed Interests shall be entitled to receive distributions under the Plan.

(b) With respect to Filed Claims or filed Proofs of Interest, the Debtor, the Liquidating Trustee or any other party in interest with standing shall have the right to object to the Proofs of Claim, Requests for Payment or Proofs of Interest in the Bankruptcy Court by the Claims Objection Deadline (as extended), but shall not be required to do so.

(c) No distribution shall be made on a Disputed Claim or a Disputed Interest until and unless such Disputed Claim becomes an Allowed Claim and such Disputed Interest becomes an Allowed Interest. Prior to making any distribution to holders of Claims or Interests in Classes 3a-6, the Liquidating Trustee, in consultation with the Post-Confirmation Committee, shall establish a separate Disputed Claims Reserve for Disputed Claims and Disputed Interests, each of which Disputed Claims Reserves shall be administered by the Liquidating Trustee. The Liquidating Trustee shall reserve in Cash or other property, for Distribution on account of each Disputed Claim or Disputed Interest, the full asserted amount (or such lesser amount as may be estimated or otherwise ordered by the Bankruptcy Court in accordance with Section 7.4 of the Plan or otherwise) with respect to each Disputed Claim.

(d) The Liquidating Trustee shall hold property in the Disputed Claims Reserves in trust for the benefit of the holders of Claims and Interests ultimately determined to be Allowed. Each Disputed Claims Reserve shall be closed and extinguished by the Liquidating Trustee when all distributions and other dispositions of Cash or other property required to be made under the Plan will have been made in accordance with the terms of the Plan. Upon closure of a Disputed Claims Reserve, all Cash or other property held in that Disputed Claims Reserve shall revest in and become the property of the PPSI Liquidating Trust. All funds or other property that vest or revest in the PPSI Liquidating Trust pursuant to this paragraph shall be used to pay the fees and expenses of the Liquidating Trustee as and to the extent set forth in the Liquidating Trust Agreement, and thereafter distributed on a Pro Rata basis to holders of Allowed Claims and Interests pursuant to the remaining provisions of this Plan at a time determined in the sole discretion of the Liquidating Trustee.

7.2 Procedures for Making Distributions to Holders of Allowed Claims and Allowed Interests

(a) The Liquidating Trustee shall serve as the Disbursing Agent under the Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

(b) The Disbursing Agent shall send distributions to the holders of the Allowed Claims and Allowed Interests at the addresses listed for such holder in the Schedules or on the applicable Proof of Claim, Proof of Interest, or notice of transfer of a Claim or Interest filed at least 5 days before the Effective Date.

(c) If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Disbursing Agent is notified by the Reorganized Debtor, the Claims Agent, or such holder of such holder's then current address, at which time all missed distributions shall be made, subject to Section 7.2(d) of the Plan, to such holder without interest. If any distribution is made by check and such check is not returned but remains uncashed for three (3) months after the date of such check, the Disbursing Agent may cancel and void such check, and the distribution with respect thereto shall be deemed undeliverable. If, pursuant to Section 7.7 of the Plan, any holder is requested to provide an applicable Internal Revenue Service form or to otherwise satisfy any tax withholding requirements with respect to a distribution and such holder fails to do so within three (3) months of the date of such request, such holder's distribution shall be deemed undeliverable.

(d) Amounts in respect of returned or otherwise undeliverable or unclaimed distributions made by the Disbursing Agent on behalf of the PPSI Liquidating Trust shall be returned to or deemed to revest in the PPSI Liquidating Trust until such distributions are claimed. All claims for returned or otherwise undeliverable or unclaimed distributions must be made (i) on or before the first (1st) anniversary of the Effective Date or (ii) with respect to any distribution made later than such date, on or before six (6) months after the date of such later distribution; after which date all undeliverable property shall revert and revest in to the PPSI Liquidating Trust free of any restrictions thereon and the claims of any holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. In the event of a timely claim for any returned or otherwise undeliverable or unclaimed distribution, the Liquidating Trustee shall deliver the applicable distribution amount or property to the Disbursing Agent for distribution pursuant to the Plan.

(e) The Disbursing Agent may elect not make a Distribution of less than $50.00 to any holder of an Allowed Claim or Interest unless the Distribution is a Final Distribution. If, at any time, the Liquidating Trustee determines that the remaining Cash and other Assets are not sufficient to make Distributions to holders of Allowed Claims and Interests in an amount that would warrant the PPSI Liquidating Trust incurring the cost of making such a Distribution, the Liquidating Trustee may dispose of such remaining Cash and other Assets in a manner the Liquidating Trustee deems to be appropriate, including donating it to a charitable organization.

7.3 Application of Distribution Record Date

On the applicable Distribution Record Date, (a) for all Claims, the Debtor's books and records for Unfiled Claims and the claims register maintained by the Claims Agent for Filed Claims and (b) for Interests, the records of the Debtor shall be closed for purposes of determining the record holders of Claims or Interests, and there shall be no further changes in the record holders of any Claims or Interests. Except as provided herein, the Liquidating Trustee, the Disbursing Agent(s) and each of their respective agents, successors, and assigns shall have no obligation to recognize any transfer of Claims or Interests occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the applicable books and records, claims registers or transfer ledgers as of 5:00 p.m. prevailing Eastern time on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

7.4 Provisions Related to Disputed Claims

(a) Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the PPSI Liquidating Trust shall have the right to make, file, prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court, objections to Claims. The costs of pursuing the objections to Claims shall be borne by the PPSI Liquidating Trust. From and after the Effective Date, in consultation with the Post-Confirmation Committee, the Liquidating Trustee and any claimant may elect to compromise, settle or otherwise resolve any objection to a Disputed Claim without approval of the Bankruptcy Court.

(b) All objections to Disputed Claims shall be filed and served upon the holders of each such Claim not later than the Claim Objection Deadline (as extended).

(c) At any time, (a) prior to the Effective Date, the Debtor, and (b) subsequent to the Effective Date, the PPSI Liquidating Trust, may request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the PPSI Liquidating Trust has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on the Claim, the Debtor or the Liquidating Trustee, as applicable, may elect to object to the ultimate allowance of the Claim or seek to reduce and allow the Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

(d) There shall be no distribution on account of any Claims held by any Person from which property is recoverable under Section 542, 543, 550 or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, provided that the Liquidating Trust has Litigation Rights with respect to such action and has brought such action prior to the applicable Distribution Date, until such time as such cause of action against that entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Person have been turned over or paid to the Debtor.

(e) **EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL NOT BE TREATED AS CREDITORS FOR PURPOSES OF DISTRIBUTION PURSUANT TO BANKRUPTCY RULE 3003(c)(2) AND PURSUANT TO THE GENERAL BAR DATE ORDER, UNLESS ON OR BEFORE THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

7.5 Adjustment of Claims Without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted on the Claims Register by the Claims Agent at the direction of the Debtor or the Liquidating Trustee, as applicable, without a Claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

7.6 Surrender of Cancelled Old Securities

As a condition precedent to receiving any distribution on account of its Allowed Interest, each holder of an Allowed Common Stock Interest and an Allowed Preferred Stock Interest shall be deemed to have surrendered any stock certificate or other documentation underlying each such Interest, and any such stock certificates and other documentation shall be deemed to be cancelled pursuant to Section 5.3 of the Plan.

7.7 Withholding and Reporting Requirements

In connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a distribution, the holder of an Allowed Claim or Allowed Interest complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder. Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim or Allowed Interest that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the applicable Disbursing Agent to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution to be held by the Disbursing Agent, as the case may be, until such time as the Disbursing Agent is satisfied with the holder's arrangements for any withholding tax obligations.

7.8 Setoffs

(a) The Liquidating Trustee may, but shall not be required to, set off against any Claim or Interest, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim or Interest, claims of any nature whatsoever that the Debtor or the Liquidating Trustee may have against the holder of such Claim; *provided*, *however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the PPSI Liquidating Trust of any such claim that the Debtor or the PPSI Liquidating Trust may have against such holder.

(b) For the avoidance of doubt, any distribution due to Moyer on account of Claims or Interests held by Moyer shall be reduced by the Moyer Setoff Amounts. The holders of Interests in Class 6 of this Plan, including Moyer or any successor in interest to Moyer's Claims against and Interests in the Estate or the Liquidating Trust Assets, shall be entitled to amounts withheld from Moyer on account of the Moyer Setoff Amounts to the extent that the Moyer Setoff Amounts are setoff against his Classes 5a, 5b or 6 distributions.

7.9 Prepayment

Except as otherwise provided in the Plan, any ancillary documents entered into in connection herewith, or the Confirmation Order, the PPSI Liquidating Trust shall have the right to prepay, without penalty, all or any portion of an Allowed Claim at any time; *provided*, *however*, that any such prepayment shall not be violative of, or otherwise prejudice, the relative priorities and parities among the Classes of Claims.

7.10 No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary contained in the Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of that Claim.

7.11 Allocation of Distributions

All distributions received under the Plan by holders of applicable Claims shall be deemed to be allocated first to the principal amount of such Claim and then to accrued pre-petition interest, if any, with respect to such Claim.

ARTICLE VIII

CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

8.1 Conditions to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date, each of which must be satisfied or waived in accordance with Section 8.3 of the Plan:

(a) an order pursuant to Bankruptcy Code Section 1125 shall have been entered finding that the Disclosure Statement contains adequate information; and

(b) the proposed Confirmation Order shall have been submitted to the Court.

8.2 Conditions to Effective Date

The following conditions precedent must be satisfied or waived on or prior to the Effective Date in accordance with Section 8.3 of the Plan:

(a) the Confirmation Order shall have been entered;

(b) the Confirmation Order shall, among other things:

(i) provide that the Debtor, the Reorganized Debtor, the Committee and the Liquidating Trust are authorized and directed to take all actions necessary or appropriate to enter into, implement, and consummate the transactions contemplated by and the contracts, instruments, releases, indentures, and other agreements or documents created under or in connection with the Plan; and

(ii) authorize the issuance of the New Common Stock.

(c) the Confirmation Order shall not then be stayed, vacated, or reversed;

(d) all other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed, or will be effected or executed contemporaneously with implementation of the Plan;

(e) the New Common Stockholder accepts the New Common Stock; and

(f) the fees and expenses required to be paid on the Effective Date pursuant to Section 10.2 of the Plan shall have been paid in full in Cash.

8.3 Waiver of Conditions

Each of the conditions set forth in Sections 8.1 and 8.2, with the express exception of the conditions contained in Sections 8.1(a)(i) and 8.2(a), may be waived in whole or in part by the Debtor in consultation with the Committee without any notice to parties in interest or the Bankruptcy Court and without a hearing.

8.4 Operations of the Debtor Between the Confirmation Date and the Effective Date

During the period from the Confirmation Date through and until the Effective Date, the Debtor shall continue to operate its business as debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all Final Orders.

8.5 Effective Date

On or within one Business Day of the Effective Date, the Debtor shall file and serve a notice of occurrence of the Effective Date. Such notice shall contain the deadline by which all parties will be required to file and serve any Request for Payment for any unpaid Administrative Claims, including, but not limited to, Professional Fee Claims and any substantial contribution claims.

ARTICLE IX

RETENTION OF JURISDICTION

9.1 Scope of Retention of Jurisdiction

Under Bankruptcy Code Sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim (whether a Filed Claim or Unfiled Claim) or Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the holder), including, without limitation, the resolution of any Request for Payment and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) hear and determine all applications for Professional Fees; *provided*, *however*, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Reorganized Debtor, the Post-Confirmation Committee or the PPSI Liquidating Trust shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(c) hear and determine all matters with respect to contracts or leases or the assumption or rejection of any contracts or leases to which a Debtor was a party or with respect to which the Debtor may be liable, including, if necessary and without limitation, the nature or amount of any required Cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case or the Litigation Rights;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including, without limitation, disputes arising under agreements, documents, or instruments executed in connection with the Plan, *provided*, *however*, that any dispute arising under or in connection with the New Debtor Governing Documents shall be adjudicated in accordance with the provisions of the applicable document;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(l) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case or provided for under the Plan;

(m) except as otherwise limited herein, recover all assets of the Debtor and property of the Estate, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code Sections 346, 505, and 1146;

(o) hear and determine all disputes involving the existence, nature, or scope of the Debtor's discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and

(q) enter a final decree closing the Chapter 11 Case.

9.2 Failure of the Bankruptcy Court to Exercise Jurisdiction

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in Section 9.1 of the Plan, the provisions of this Article IX shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Administrative Expense Claims, Professional Fee Claims and Substantial Contribution Claims

All final Requests for Payment of Administrative Expense Claims, Professional Fee Claims and any substantial contribution claims under Section 503(b) of the Bankruptcy Code must be filed and served on the PPSI Liquidating Trust, its counsel, and other necessary parties in interest no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such Requests for Payment must be filed and served on the PPSI Liquidating Trust, its counsel, and the requesting Professional or other entity no later than twenty (20) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable Request for Payment was served.

10.2 Payment of Statutory Fees

All quarterly fees payable pursuant to Section 1930 of Title 28 of the United States Code prior to the Effective Date shall be paid by the Debtor on or before the Effective Date. All such fees payable after the Effective Date shall be paid by the PPSI Liquidating Trust as and when due, until such time as the Chapter 11 Case is closed, dismissed or converted.

10.3 Successors and Assigns and Binding Effect

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of such Person, including, but not limited to, the PPSI Liquidating Trust, the Reorganized Debtor and all other parties in interest in the Chapter 11 Case.

10.4 Preservation of Subordination Rights

Nothing contained in this Plan shall be deemed to modify, impair, terminate or otherwise affect in any way the rights of any Entity under section 510(a) of the Bankruptcy Code, and all such rights are expressly preserved under this Plan. The treatment set forth in Article III of the Plan and the distributions to the various Classes of Claims and Interests hereunder shall not affect the right of any Person to levy, garnish, attach, or employ any other legal process with respect to such distributions by reason of any claimed subordination rights or otherwise. All such rights and any agreements relating thereto shall remain in full force and effect, except as otherwise expressly compromised and settled pursuant to the Plan.

10.5 Releases

(a) **Releases by the Debtor**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the Liquidating Trustee and any Person (including the Committee) seeking to exercise the rights of the Debtor's Estate, including, without limitation, any successor to the Debtor or any Estate representative appointed or selected pursuant to Bankruptcy Code Section 1123(b)(3), shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including claims or causes of action arising under Chapter 5 of the Bankruptcy Code), and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence), whether direct or derivative, in connection with or related to the Debtor, the Chapter 11 Case, or the Plan (other than the rights of the Debtor, the Committee, the Post-Confirmation Committee, the Reorganized Debtor, the PPSI Liquidating Trust and the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date against (i) any of the directors and officers of the Debtor serving during the pendency of the Chapter 11 Case, (ii) any Professionals of the Debtor, (iii) the DIP Facility Lender, (iv) the members of the Committee, but only in their respective capacities on behalf of the Committee, (v) any Professional of the Committee, in their capacity as such; and (vi) any of the successors or assigns of any of the parties identified in the foregoing (i) through (v); *provided, however*, that nothing in this Section 10.5(a) shall be deemed to prohibit the Debtor, the

Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, causes of action or liabilities they may have against all of their respective employees, directors or officers that is based upon an alleged breach of a confidentiality, noncompete or any other contractual obligation owed to the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee.

(b) **Releases by Holders of Claims and Interests**

(i) **As of the Effective Date, to the fullest extent permissible by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each holder of a Claim or Interest that affirmatively votes in favor of the Plan and does not execute an opt out shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence) against (i) any of the directors and officers of the Debtor serving during the pendency of the Chapter 11 Case, (ii) any Professionals of the Debtor, (iii) the DIP Facility Lender, (iv) the members of the Committee, but only in their respective capacities on behalf of the Committee, (v) any Professionals of the Committee, in their capacity as such; and (vi) any of the successors or assigns of any of the parties identified in the foregoing (i) through (v) (the Persons identified in clauses (i) through (v) collectively, the "Claimholder Releasees") in connection with or related to the Debtor, the Chapter 11 Case, or the Plan (other than the rights under the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date; *provided*, *however*, that nothing herein shall be deemed a waiver or release of a Claim or Interest holder's right to receive a distribution pursuant to the terms of the Plan or any obligation under the Plan or Confirmation Order. For the avoidance of doubt, this Release by holders of Claims and Interests is not and shall not be deemed a waiver of the Debtor's rights or claims against the holders of Claims and Interests, including to the Debtor's rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any such Claim, and all such rights, Litigation Rights, causes of action and claims are expressly reserved, except as otherwise provided in the Plan.**

(ii) **In accordance with the terms of the Transaction Retention Plan, all holders of Transaction Retention Plan Claims shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whatsoever (other than for fraud, willful misconduct, criminal conduct and/or gross negligence) against the Debtor, the PPSI Liquidating Trust and the Reorganized Debtor and anyone affiliated with any of the foregoing in consideration for a distribution on account of his/her Transaction Retention Plan Claim; provided, however, that any Claim scheduled as undisputed or Filed Claims that were filed before the Bar Date are not released pursuant to this Section 10.5(b)(ii). This Section 10.5(b)(ii) will be deemed to satisfy the requirement of the Transaction Retention Plan that the participants in the Transaction Retention Plan execute a release in order to receive benefits thereunder.**

10.6 Discharge of the Debtor

(a) Except as otherwise provided herein or in the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any nature whatsoever against the Debtor or any of its assets or properties and, regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, retained, or distributed pursuant to the Plan on account of such Claims, upon the Effective Date, (i) the Debtor shall be deemed discharged and released under Bankruptcy Code Section 1141(d)(1)(A) from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in Bankruptcy Code Section 502, whether or not (A) a Proof of Claim based upon such debt is filed or deemed filed under Bankruptcy Code Section 501, (B) a Claim based upon such debt is Allowed under Bankruptcy Code Section 502, (C) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (D) the holder of a Claim based upon such debt accepted the Plan, and (ii) all Preferred Stock Interests and Common Stock Interests shall be terminated.

(b) As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtor, the Committee, the Reorganized Debtor, the Post-Confirmation Committee, the PPSI Liquidating Trust, or the Liquidating Trustee any other or further claims, debts, rights, causes of action, claims for relief, liabilities, or equity interests relating to the Debtor based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtor and termination of all Phoenix Preferred Stock and Phoenix Common Stock, pursuant to Bankruptcy Code Sections 524 and 1141, and such discharge shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

10.7 Exculpation and Limitation of Liability

(a) **To the fullest extent permitted by applicable law and approved in the Confirmation Order, none of the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the Liquidating Trustee, the Debtor's Professionals, the Committee's Professionals, and any member of the Committee, solely acting in that capacity, the DIP Facility Lender, or any of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns), shall have or incur any liability to any holder of a Claim or an Interest, or any of their respective present or former directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions that are the result of fraud, criminal conduct, gross negligence, or willful misconduct or willful violation of federal or state securities laws or the Internal Revenue Code, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.**

(b) **Notwithstanding any other provision of the Plan, to the fullest extent permitted by applicable law and approved in the Confirmation Order, no holder of a Claim or an Interest, no other party in interest, and none of their respective present or former directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, shall have any right of action against the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust, the Liquidating Trustee, the Debtor's Professionals, the Committee's Professionals, and any member of the Committee, solely acting in that capacity, the DIP Facility Lender, or any of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other advisors, successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, negotiation, or implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions that are the result of fraud, criminal conduct, gross negligence, or willful misconduct or willful violation of federal or state securities laws or the Internal Revenue Code.**

10.8 Injunction

(a) **Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions against the Debtor, the Reorganized Debtor, the Committee, the PPSI Liquidating Trust, the Liquidating Trustee and their respective subsidiaries or their property on account of any such discharged Claims, debts, or liabilities or terminated Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtor, the Reorganized Debtor, the PPSI Liquidating Trust or the Liquidating Trustee; or (v) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.**

(b) **Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, or may hold, a Claim, or an Interest or other right of an equity security holder, obligation, suit, judgment, damage, demand, debt, right, cause of action, or liability that is released pursuant to Sections 10.5, 10.6, or 10.7 of the Plan are permanently enjoined from taking any of the following actions on account of such released Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities or terminated Interests or rights, including against the Claimholder Releasees: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff against any debt, liability, or obligation due to any released Person; or (v) commencing or continuing any action, in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.**

(c) **Without limiting the effect of the foregoing provisions of this Section 10.8 upon any Person, by accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in this Section 10.8.**

10.9 Term of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code Sections 105 or 362 or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

10.10 Survival of the Final DIP Order

The terms and conditions of the Final DIP Order and protections afforded to the DIP Facility Lender in the Final DIP Order shall continue and survive beyond the Effective Date of the Plan.

10.11 Modifications and Amendments

In consultation with the Committee, the Debtor may alter, amend, or modify the Plan under Bankruptcy Code Section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in Bankruptcy Code Section 1101(2), the Debtor may under Bankruptcy Code Section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, *provided*, *however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

10.12 Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under Section 1101 and 1127(b) of the Bankruptcy Code.

10.13 Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtor shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

10.14 Revocation, Withdrawal, or Non-Consummation

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or withdraws the Plan in accordance with this Section 10.13, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, any Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (iii) constitute an admission of any sort by any Debtor or any other Person.

10.15 Notices

Any notice, request, or demand required or permitted to be made or provided to or upon the Debtor, the Reorganized Debtor or the PPSI Liquidating Trust under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, and (d) addressed as follows:

For the Debtor:

Phoenix Payment Systems, Inc.
1201 N. Market Street
Wilmington, Delaware 19801
Attn: Michael E. Jacoby

with copies to:

RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801
Attn: Mark D. Collins, Esq. and Russell C. Silberglied, Esq.
Telephone: 302-651-7700
Facsimile: 302-651-7701

For the Committee:

LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, NJ 07068
Attn: Kenneth A. Rosen, Esq., Sharon L. Levine, Esq. and Wojciech F. Jung, Esq.
Telephone: 973-597-2500

-and -

WHITE AND WILLIAMS LLP
824 North Market Street, Suite 902
Wilmington, DE 19899 -0709
Attn: Marc S. Casarino, Esq.
Telephone: 302-654-0424

10.16 Conflicts

To the extent any provision of the Disclosure Statement or any instrument, document or agreement executed in connection with the Plan (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) conflicts with or is in any way inconsistent with the terms of the Plan, the terms and provisions of the Plan shall govern and control.

[SIGNATURE PAGE FOLLOWS]

Dated: December 23, 2014

PHOENIX PAYMENT SYSTEMS, INC. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
as Proponents of the Plan

By: */s/* Michael E. Jacoby
Michael E. Jacoby
Chief Restructuring Officer of Phoenix Payments Systems, Inc.

By: */s/* Wojciech F. Jung
Lowenstein Sandler LLP, as counsel to the Committee

RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins, Esq.
Russell C. Silberglied, Esq.
Zachary I. Shapiro, Esq.
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920 North King Street
Wilmington, DE 19801
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Counsel for Debtor and Debtor in Possession

LOWENSTEIN SANDLER LLP
Kenneth A. Rosen
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Wojciech F. Jung
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2500

-and -

WHITE AND WILLIAMS LLP
Marc S. Casarino
824 North Market Street, Suite 902
Wilmington, DE 19899 -0709
(302) 654-0424

Counsel for the Official Committee of Unsecured Creditors

EXHIBIT DS-2

[JACOBY AFFIDAVIT]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
Phoenix Payment Systems, Inc.	)	Case No. 14-_____ (_____)
Debtor.	)	

DECLARATION OF MICHAEL E. JACOBY IN SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY MOTIONS

Under 28 U.S.C. § 1764, Michael E. Jacoby declares as follows under the penalty of perjury:

1. I am the Chief Restructuring Officer of Phoenix Payment Systems, Inc., a corporation organized under the laws of the state of Delaware and the debtor (the "**Debtor**") in the above-captioned chapter 11 case (the "**Chapter 11 Case**"). I have served as the Chief Restructuring Officer of the Debtor since February 3, 2014 and am authorized to submit this declaration (the "**First Day Declaration**") on behalf of the Debtor.

2. I am generally familiar with the Debtor's business, day-to-day operations, financial matters, results of operations, cash flows, and underlying books and records. All facts set forth in this declaration are based upon my personal knowledge of the Debtor's business, operations, and related financial information gathered from my review of its books and records, relevant documents, and information supplied to me by members of the Debtor's management team and advisors. If called to testify, I could and would testify competently to the facts set forth in this First day Declaration.

3. On August 4, 2014 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief in the United States Bankruptcy Court for the District of Delaware (the "**Court**"). The

Docket No. 3
Filed: 8/4/14

purpose of this Chapter 11 filing is to facilitate the entry into an asset purchase agreement to sell substantially all of the Debtor's assets to a wholly-owned subsidiary (the "**Purchaser**") of North American Bancard ("**NAB**") or another higher or otherwise better bidder pursuant to Section 363 of the Bankruptcy Code (the "**Sale**"). The Sale is somewhat unusual in today's Chapter 11 environment in that, upon consummation, it will provide sufficient proceeds to pay all undisputed creditors in full as well as a significant distributions to the Debtor's equity holders.

4. I submit this First Day Declaration on behalf of the Debtor in support of the Debtor's (a) voluntary petition for relief that was filed under chapter 11 of the Bankruptcy Code and (b) "first day" motions, which are being filed concurrently herewith (collectively, the "**First Day Motions**").[1] The Debtor seeks the relief set forth in the First Day Motions to minimize the adverse effects of the commencement of the Chapter 11 Case on its business so as to preserve the business pending the Sale. I have reviewed the Debtor's petition and the First Day Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtor's business and to successfully maximize the value of the Debtor's estate.

5. Part I of this First Day Declaration provides an overview of the Debtor's business, capital structure, and significant prepetition indebtedness, as well as a discussion of the Debtor's financial performance and the events leading to the Debtor's chapter 11 filing. Part II sets forth the relevant facts in support of the First Day Motions.

[1] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the applicable First Day Motion.

PART I

A. General Background

6. Founded on March 4, 2004, the Debtor is an international payment processor with corporate headquarters in Wilmington, Delaware and technology headquarters in Phoenix, Arizona. The Debtor provides secure, reliable, easy-to-use and cost-effective acceptance, processing, support, authorization and settlement services for credit card, debit card and e-check payments.

7. The Debtor, a top 35 merchant processor, has direct connections to all four major card associations, which establish all payment types in all payment environments. Providing processing services at more than 8,700 locations worldwide, the Debtor processed, in multiple currencies, approximately 280 million transactions in 2013 and expects to process 400 million in 2014. The Debtor serves hundreds of merchants (the "**Merchants**") and financial institutions, including Fortune 500 firms, large public entities and governments and small-to-medium businesses.

8. The Debtor provides its services through its proprietary software and systems platform which was designed and built from the ground up in 2004 to address current and future front- and back-end processing needs. This feature-rich platform includes: secure payment processing; a "webSuite" which allows for real-time, web-based reporting, data analysis and exports, exception transactions, chargebacks and merchant statements; a "PayPage" that enables eCommerce merchants to outsource online payment acceptance; a virtual terminal offering mode for processing point-of-sale, mail order/telephone order and eCommerce transactions; and a "vPost" which emulates all of the functionality of a high-volume point-of-sale terminal through a web browser.

B. The Debtor's Relationship with Bancorp

i. The Bancorp Agreements

9. The Debtor derives substantially all of its revenues from merchants whose customers pay with VISA U.S.A. Inc. ("**VISA**"), MasterCard International Incorporated ("**MasterCard**"), Discover Financial Services ("**Discover**") and American Express ("**Amex**," and) collectively, the "**Associations**"). The Debtor's ability to provide the Merchants with access to and process merchant payment transactions with the Associations is vital to the Debtor's ongoing business as an independent sales organization. In order to be in a position to accept and receive credit for purchases made with VISA or MasterCard credit cards, the Merchants must be a party to a merchant services agreement or similar agreement with a party that has access to the VISA/MasterCard payment and collection systems. Bancorp currently is such a party that has access to the VISA/MasterCard payment and collections systems. Pursuant to the processing agreements discussed below, Bancorp (i) sponsors sales and credit transactions submitted by the Debtor's Merchants whose customers use their VISA or MasterCard credit cards; (ii) sponsors the Debtor into the Associations as an independent sales organization and establishes and maintains a dedicated segregated Association Bank Identification Number (BIN) and Interbank Card Association (ICA) for Debtor; (iii) and makes payment to VISA or MasterCard for fees, and then makes certain settlement payments to the Debtor. In addition, as a result of overdrafts and negative cash flow, Bancorp advanced monies to the Debtor in connection with the processing of transactions above, over a period of years, which sums, were secured (together with Guaranty of Moyer Obligations (defined below), as discussed below) against all of the assets of the Debtor. The advances and guaranty obligations enabled the Debtor to continue to operate while in a cash deficit position.

10. As a result, the Debtor has multiple agreements with The Bancorp Bank ("**Bancorp**"). They fall into two categories: (a) agreements that enable the Debtor to operate its business with Bancorp as its sponsor bank, including (i) the ISO Agreement, dated May 31, 2005, and all related schedules and ancillary agreements attached thereto, including that certain Surety Agreement (the "**Surety Agreement**"), executed by Raymond D. Moyer, the largest stockholder of the Debtor and the Debtor's former Chief Executive Officer ("**Moyer**") (as amended pursuant to the First Amendment to the ISO Agreement, dated June 1, 2010, and the Second Amendment to the ISO Agreement, dated November 31, 2011, the "**ISO Agreement**"); (ii) the Processor Agreement, effective May 31, 2005 (as amended pursuant to the First Amendment to the Processor Agreement, dated June 1, 2010, the "**Processor Agreement**"); (iii) the Sponsorship Agreement, dated May 31, 2005 (as amended pursuant to the First Amendment to the Sponsorship Agreement, dated June 1, 2010, the "**Sponsorship Agreement**"); and (iv) the Originating Depository Financing Institution Agreement, dated June 15, 2007; and (b) financial accommodation arrangements, including the financial accommodation letter from Bancorp to the Debtor, accepted on April 11, 2012 (the "**Accommodation Agreement**") and all exhibits thereto, including that certain Security Agreement, dated April 11, 2012 (as amended on or about June 27, 2012 and further amended on May 9, 2014, the "**Security Agreement**"). All of these agreements are collectively referred to herein as the "**Bancorp Agreements**."

11. In addition to the Bancorp Agreements, Moyer personally was a party to several agreements with Bancorp, including, (a) in 2002, a promissory note, credit agreement (which was modified in 2010) and mortgage whereby Bancorp extended a loan in the original principal amount of $2,000,000.00 to Moyer (the "**Moyer Loan Documents**") and (b) the Stock Pledge and Security Agreement, dated April 11, 2011 (as amended twice on June 27, 2012, the "**Stock**

Pledge," and together with the Moyer Loan Documents, the "**Moyer Agreements**"), between the Bancorp and Moyer and the Agreement and Acknowledgment of Stock Pledge, executed by the Debtor on even date. The obligations under the Moyer Loan Documents were secured by Moyer's personal residence located in Pennsylvania. As explained below, the Debtor later guaranteed Moyer's obligations under the Moyer Loan Documents, and the obligations under the Guaranty of Moyer Obligations (defined below) are governed by the Security Agreement.

12. The purpose and relevant provisions of each Bancorp Agreement and Moyer Agreement are as follows:

- The ISO Agreement
  - ♦ establishes the Debtor as an "Independent Sales Organization" (an "**ISO**");
  - ♦ sets forth the Debtor's duties, among other things, as (a) marketing Bancorp's transaction processing and other services relating to transactions that use payment cards of VISA and Mastercard, (b) providing software or technical documentation and technical support in order to allow the Merchants to process sales transactions through the VISA/MasterCard processing systems, and (c) providing authorization, settlement, chargeback processing and reporting, 24 hours per day, 365 days per year; and
  - ♦ provides that accepted Merchants, Bancorp, and the Debtor enter into a merchant agreement (each such agreement a "**Merchant Agreement**").
- The Surety Agreement serves as a guaranty from Moyer to Bancorp of the obligations of the Merchants under the Merchant Agreements.
- The Processor Agreement engages the Debtor to provide merchant processing and settlement services for the benefit of the Merchants on behalf of Bancorp, in its capacity as a licensee of VISA and MasterCard.
- The Sponsorship Agreement provides the Debtor with sponsorship services from Bancorp that VISA and MasterCard require in exchange for providing endpoint processing equipment.
- The Accommodation Agreement provides the Debtor with extensions of credit and extensions of payment terms from Bancorp under the Bancorp Agreements.
- The Security Agreement establishes a security interest in all of the assets of the Debtor to secure the Debtor's obligations to Bancorp.

- The Stock Pledge establishes a security interest in all of Moyer's stock certificates in the Debtor to secure Moyer's obligations under the Surety Agreement and grants an irrevocable voting proxy, exercisable at Bancorp's election upon a continuing event of default, to vote, as Moyer's proxy, Moyer's shares.

ii. The Debtor's Obligations to Bancorp Under the Bancorp Agreements and the Guaranty of Moyer Obligations and the Forbearances

13. In May 2012, the Debtor defaulted under the Bancorp Agreements and Moyer defaulted under the Bancorp Agreements and the Moyer Loan Documents. Pursuant to that certain Forbearance Agreement, dated as of June 27, 2012 (the "**Forbearance Agreement**"), Bancorp agreed to forbear from exercising its remedies under the Bancorp Agreements during the period of time commencing on June 27, 2012 and ending on the earlier of October 1, 2013 or the occurrence of certain events specified in the Forbearance Agreement, including failure to comply with the Forbearance Agreement or any of the Bancorp Agreements, failure to make agreed payments to Bancorp, failure to maintain a positive cash balance, or the occurrence of certain insolvency events involving the Debtor or Moyer.

14. In exchange for Bancorp's agreement to forbear, the Debtor agreed, among other things, to (a) pay a forbearance fee and (b) provide an unconditional and absolute guaranty of payment to Bancorp of the obligations under the Moyer Loan Documents (the "**Guaranty of Moyer Obligations**"). The Guaranty of Moyer Obligations was secured by all assets of the Debtor other than computer equipment that is leased to the Debtor and Moyer's stock certificates in the Debtor pursuant to the Security Agreement and the Stock Pledge.

15. In February 2013, the Debtor, Bancorp and Moyer entered into the first amendment to the Forbearance Agreement (the "**First Amendment**"). Pursuant to the First Amendment, Bancorp agreed to delay invoicing the Debtor for certain fines assessed by VISA in November and December of 2012. Throughout 2013 and in January 2014, the Debtor received multiple notices of default of the Bancorp Agreements and the Forbearance Agreement. All of

the obligations due under the Bancorp Agreements, the Forbearance Agreement and the Guaranty of Moyer Obligations were accelerated and due in full. However, the Debtor had no means to and did not make the payments.

16. On February 3, 2014, Bancorp exercised its right under the Stock Pledge and Voting Proxy to serve as Moyer's proxy for the purpose of voting Moyer's stock (which represents a majority of voting shares of the Debtor's stock) to remove Moyer as the sole director of the board of directors and replace him with an independent director. In turn, the independent director (constituting 100% of the board of directors) exercised a written consent removing Moyer from his position as the Debtor's Chief Executive Officer and terminating his employment with the Debtor. As set forth in further detail below, the independent director also authorized my retention as the Debtor's Chief Restructuring Officer. Later, the board was expanded to three directors, and Nancy Reilly, who had been (and continues to be) the Debtor's Chief Financial Officer, was named as the Debtor's new Chief Executive Officer.[2]

17. On May 9, 2014, the Debtor and Bancorp entered into the Second Forbearance Agreement (the "**Second Forbearance Agreement**"). The Second Forbearance Agreement confirms that, as of May 8, 2014, the Debtor was indebted to Bancorp in the aggregate amount of at least $3,123,620.74 (the "**Bancorp Obligations**"), $1,759,175.25 of which was the Guaranty of Moyer Obligations. The Debtor's obligations to Bancorp are secured by a lien on all of the Debtor's property other than equipment that is leased to the Debtor.

18. In exchange for Bancorp's agreement to continue to forebear from exercising its remedies under the Bancorp Agreements, the Forbearance Agreement and the Guaranty of

[2] In order to induce each of these directors, as well as myself, to take on their new positions with a cash flow insolvent company, Bancorp agreed to indemnify each board member as well as my firm, PMCM, LLC, and me. The agreements are general indemnifications which cover claims arising from the board members' and my service as directors and/or officers, as applicable.

Moyer Obligations, the Debtor agreed to consummate a transaction meeting the specifications set forth in the Second Forbearance Agreement within certain milestones, including entering into a definitive agreement for a transaction with a purchaser/investor that is reasonably acceptable to Bancorp on or before June 30, 2014 and closing a transaction with an approved purchaser on or before August 31, 2014. These milestone dates were subsequently extended to July 21, 2014 and September 8, 2014, respectively.

C. Capital Structure

19. As of the Petition Date, the Debtor had total outstanding liabilities and other obligations of approximately $16.6 million and approximately 9.8 million shares of outstanding preferred and common stock. A detailed discussion of the Debtor's capital structure, including its various debt obligations, is set forth below.

i. Debt Structure

20. As set forth above, the Debtor has certain monetary obligations to Bancorp pursuant to the Bancorp Agreements and the Guaranty of Moyer Obligations. As further set forth above, the aggregate amount of these obligations as of May 8, 2014 was approximately $3,123,620.74. The Debtor estimates that as of the Petition Date the Debtor's obligations to Bancorp are approximately $6.2 million. Pursuant to the Security Agreement, Bancorp holds a first priority lien on all of the Debtor's assets other than equipment leased to the Debtor to secure these obligations.

21. In addition to the secured obligations due to Bancorp, the Debtor has approximately $471,345 in second lien debt in favor of the law firm of Wollmuth, Maher & Deutsch, LLP. The Debtor also has capital lease obligations in an approximate amount of $161,881 as of May 31, 2014. The remainder of its liabilities are unsecured and were incurred in the ordinary course of business in the amount of approximately $9.7 million.

ii. Equity Structure

22. The Debtor has issued both preferred stock (7,514,859 shares in 6 series) and common stock (2,322,788 shares) to individuals and corporate entities. Those individuals and entities, and their percentage ownership in each type of stock is set forth in the Debtor's Chapter 11 petition.

23. The Debtor received cash between February 2010 and September 2013 from the following entities: Frascella Capital, LLC, JEMS Venture Capital, LLC and DFW Investments, LLC. The amounts received were always intended to be Class B-2 preferred stock investments. Seven days after Moyer was terminated, for the first time, the Debtor received purported "notes" with respect to the cash received from these entities. The "notes" purport to have a feature whereby on any sale of the Debtor, the "noteholders" will receive double the amount of their investment. While dated in 2010, 2011 and 2013, the "notes" are virtually identical, and state that they were entered into in connection with each other, which does not logically follow. Moreover, one of the "notes" purports to apply to amounts for which a Class B-2 stock certificate in fact had been issued years earlier, and a portion of a second "note" was similarly previously documented as a Class B-2 preferred stock investment. The Debtor's position is that these "notes" are invalid under several different legal theories and that the amounts advanced that were not previously documented as a Class B-2 preferred stock investment -- approximately $6.5 million -- are in fact preferred equity. The $6.5 million in questions is not reflected elsewhere in any of the amounts set forth in this Section I.C.

D. Events Leading Up to the Chapter 11 Case

i. The Debtor's Defaults Under the Bancorp Agreements and the Guaranty of Moyer Obligations; My Appointment as Chief Restructuring Officer

24. As set forth above, in 2012, the Debtor defaulted under the Bancorp Agreement and has been operating under forbearance agreements since that time. The Second Forbearance Agreement, dated May 9, 2014, required the Debtor to consummate a transaction within the milestones set forth in paragraph 18 above and paragraph 21 of the Second Forbearance Agreement. The transaction was required "to include termination of the [Bancorp Agreements] unless otherwise consented to by Bancorp."

25. In addition, the Debtor has been cash flow insolvent since at least December 2013 (if not significantly earlier) and could not meet its debts as they came due without funding from Bancorp, which Bancorp was not required to provide. Moreover, the Debtor was a defendant in several lawsuits (with others threatened) and began suffering default and stipulated judgments due to its inability to pay undisputed claims as well as defense counsel to defend those suits.

26. On February 3, 2014, following the termination of Moyer's employment, I was appointed as Chief Restructuring Officer of the Debtor. Upon my appointment and after evaluating the financial condition of the Debtor, the Debtor retained Raymond James (based on my recommendation as approved by the Debtor's board of directors) to assist in advising on the Debtor's strategic options, including a recapitalization, investment, sale of assets, sale of stock or other transaction in or out of court. Immediately upon its retention, Raymond James commenced the marketing process set forth below.

ii. Pre-Petition Marketing Efforts

27. With the Debtor's assistance, Raymond James identified financial and strategic investors (collectively, the "**Interested Parties**") to garner interest in pursuing a transaction with

the Debtor of any type, including a sale, recapitalization or investment in the Debtor (a "**Potential Transaction**"). Commencing on March 25, 2014, Raymond James contacted and sent teasers to 140 Interested Parties. Fifty-four (54) of them executed non-disclosure agreements and were asked to submit initial non-binding letters of intent ("**Initial LOIs**") by April 23, 2014. Interested Parties that had executed non-disclosure agreements were then given the opportunity to gain access to an electronic data room. On or around that date, nine (9) Interested Parties submitted Initial LOIs, all of which focused on acquiring the Debtor's assets or stock. Accordingly, at that point, the Debtor devoted its attention and focus to pursuing a sale of its assets or stock. Thereafter, six (6) Interested Parties attended management presentations at the Debtor's offices in Delaware or Arizona.

28. Due, in large part, to the Debtor receiving a significant amount of interest from Interested Parties, and with the expectation that Interested Parties would increase and/or otherwise refine their offers for the Debtor's assets or stock once they performed further diligence, Raymond James requested that Interested Parties submit revised non-binding letters of intent ("**2nd Round LOIs**") by May 27, 2014. On or around the deadline, four (4) Interested Parties submitted 2nd Round LOIs. After reviewing and carefully considering the letters of intent, the Debtor, in consultation with its advisors, (i) determined that it should provide Interested Parties with the option to submit yet another non-binding letter of intent ("**Best and Final LOIs**") to further increase the proposed purchase price for the Debtor's assets or stock and (ii) set June 17, 2014 as the deadline to submit Best and Final LOIs. On or around such date, four (4) Interested Parties submitted Best and Final LOIs. After reviewing and carefully considering the letters of intent, the Debtor determined, in consultation with its advisors, that the Best and Final LOI submitted by NAB was the highest or otherwise best offer.

29. On July 31, 2014, the Debtor and the Purchaser entered into a stalking horse asset purchase agreement (the "**Stalking Horse Agreement**"). As a result of the robust and multi-staged pre-petition marketing process conducted by Raymond James, the proposed purchase price for the Debtor's assets under the Stalking Horse Agreement is 3.5 times greater than an indication of interest received late in 2013 from NAB. Moreover, the Stalking Horse Agreement provides the Debtor with a firm commitment that is not subject to any financing or due diligence contingencies and thereby provides the Debtor with a floor against which other bidders can submit competing bids for the Debtor's assets through an auction process.

30. The Stalking Horse Agreement's $50 million purchase price also is highly attractive in that it is sufficient to pay all undisputed creditors in full provides a substantial recovery for the Debtor's equity security holders.

iii. Anticipated Chapter 11 Process

31. As set forth above, the Debtor has determined that value will be maximized by commencing a Chapter 11 case and continuing an orderly sale process. While the pre-petition process already was extensive and lengthy, the commencement of this Chapter 11 Case and the implementation of a Bankruptcy Court supervised sale process allows other bidders to make competing bids and therefor to maximize the value of its estate for the benefit of the Debtor's stakeholders.

32. A sale pursuant to Section 363 of the Bankruptcy Code is the most appropriate course of action for the Debtor. As set forth above, if the proposed Sale is consummated, not only will the Debtor's creditors recover 100% on account of any allowed claims against the estate, the Debtor's equity holders will also receive significant distributions from the proceeds of such Sale. The Debtor does not believe that the Sale could be consummated outside of this bankruptcy proceeding. Among other reasons, while the purchaser originally was willing to

entertain non-bankruptcy options, it required certain representations and warranties that the Debtor could not have provided in an out of court deal. It also required certain third party consents that the Debtor was unable to obtain. Accordingly, the Debtor commenced the Chapter 11 Case.

PART II

33. In furtherance of the reorganization of the Debtor through a sale of all or substantially all of the Debtor's assets, the Debtor is seeking approval of the First Day Motions and related orders (the "**Proposed Orders**").

34. I have reviewed each of the First Day Motions, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Motions (a) is vital to enabling the Debtor to make the transition to, and operate in, chapter 11 with minimum disruption to its business or loss of productivity or value and (b) constitutes a critical element in the Debtor's being able to successfully maximize value for the benefit of its estate.

A. Application to Appoint Rust Consulting/Omni Bankruptcy as Claims Agent

35. The Debtor filed a motion (the "**Section 156(c) Application**") contemporaneously herewith to retain Rust Consulting/Omni Bankruptcy ("**Rust/Omni**"), as claims, noticing, soliciting, and balloting agent pursuant to Sections 105(a), 156(c), and rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"). Rust/Omni is one of the country's leading chapter 11 administrators, with significant experience in noticing, claims administration, solicitation, balloting, and other administrative aspects of chapter 11 cases. Appointing Rust/Omni as the claims and noticing agent in the Chapter 11 Case will relieve the

administrative burden on the Clerk of the Bankruptcy Court for the District of Delaware (the "**Clerk**").

36. The Debtor's selection of Rust/Omni to act as the claims and noticing agent has complied with the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, in that the Debtor has obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtor submits, based on all engagement proposals obtained and reviewed, that Rust/Omni's rates are competitive and reasonable given Rust/Omni's quality of services and expertise. The Section 156(c) Application pertains only to the work to be performed by Rust/Omni under the Clerk's delegation of duties permitted by Judicial Code Section 156(c) and Local Rule 2002-1(f), and any work to be performed by Rust/Omni outside of this scope is not covered by the Section 156(c) Application or by any order granting approval thereof. A separate retention application addressing Rust/Omni's services beyond Section 156(c) of the Bankruptcy Code will be filed shortly.

B. Cash Management Motion

37. The Debtor has also filed a motion (the "**Cash Management Motion**"), pursuant to sections 105(a), 345(b) and 363(c) of the Bankruptcy Code, requesting the entry of an order: (i) authorizing, but not directing, the Debtor to continue to maintain and use its existing cash management system, including maintenance of the Debtor's existing bank accounts, checks and business forms; (ii) granting the Debtor a waiver of certain bank accounts requirements and related requirements of the Office of the United States Trustee to the extent that such requirements are inconsistent with (a) the Debtor's existing practices under the cash management system or (b) any action taken by the Debtor in accordance with any order granting this Motion

or any other order entered in the Chapter 11 Case; and (iii) granting the Debtor additional time to comply with section 345 of the Bankruptcy Code.

38. In the ordinary course of its business, the Debtor maintains a cash management system (the "**Cash Management System**"). The Cash Management System is integral to the operation and administration of the Debtor's business. The Cash Management System is an ordinary course, customary and essential business practice and allows the Debtor to efficiently identify the Debtor's cash requirements and efficiently monitor and control all of the Debtor's cash receipts and disbursements. The Cash Management System is similar to those utilized by many other companies of comparable size and complexity to collect, transfer and disburse funds in a cost-effective and efficient manner.

39. The continued use of the Debtor's Cash Management System during the pendency of the Chapter 11 Case is essential to the Debtor's business operations and its goal of maximizing value for the benefit of all parties in interest. Requiring the Debtor to adopt new cash management systems at this early and critical stage would be expensive, impose needless administrative burdens and cause undue disruption. Any such disruption would adversely affect the Debtor's ability to maximize estate value for the benefit of creditors and other parties in interest. Moreover, such a disruption would be wholly unnecessary insofar as the Debtor's cash management system provides a valuable and efficient means for the Debtor to address its cash management requirements. Maintaining the Debtor's existing cash management system without disruption is both essential to the Debtor's ongoing operations and in the best interests of the Debtor, its estate and all interested parties. Accordingly, the Debtor requests that it be allowed to maintain and continue to use its Cash Management System and bank accounts.

40. To minimize expenses to its estate, the Debtor seeks authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor's status as debtor in possession; provided, however, that in the event the Debtor generates new checks during the pendency of this case other than from its existing stock of checks, such checks will include a legend referring to the Debtor as "Debtor in Possession." Most parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as a debtor in possession as a result of the publicity of this case, planned outreach, the correspondence the Debtor intends to provide to customers and vendors, and additional press coverage. Moreover, the Debtor will provide notice of the commencement of the Chapter 11 Case to creditors and other parties-in-interest. Changing the Debtor's existing checks, correspondence and other business forms would be expensive, unnecessary and burdensome to the Debtor's estate. Further, such changes would be disruptive to the Debtor's business operations and would not confer any benefit upon those dealing with the Debtor.

41. The Debtor believes that the funds held in its bank accounts are secure and that obtaining bonds to secure those funds, as required by section 345(b) of the Bankruptcy Code, would be unnecessary and detrimental to the Debtor's estate and creditors. However, the Debtor needs time to consult with the United States Trustee in order to determine whether its Cash Management System is currently in compliance with the requirements of section 345(b) of the Bankruptcy Code and/or whether the Debtor needs to take any further action to bring its Cash Management System into compliance with the requirements of section 345(b). The Debtor is therefore requesting a sixty (60) day extension of its time to comply with the requirements of section 345(b) of the Bankruptcy Code.

42. I believe that the continued operation of the Debtor's Cash Management System is in the best interests of the Debtor's estate and creditors, will avoid immediate and irreparable harm to the Debtor, and is both necessary and appropriate to further the reorganization policy of chapter 11.

C. Employee Obligations Motion

43. The Debtor has also filed a motion (the "**Employee Obligations Motion**") seeking the entry of an order authorizing them, in their discretion, to pay, continue or otherwise honor various prepetition Workforce-related (as defined below) obligations (collectively, the "**Prepetition Workforce Obligations**") to or for the benefit of its (a) full-time regular employees who are not in a temporary status and who are typically scheduled to work more than thirty (30) hours per week (the "**Full-Time Employees**"), (b) part-time employees who are not in a temporary status and who are typically scheduled to work less than thirty (30) hours per week (the "**Part-Time Employees**" and, together with the Full-Time Employees, the "**Employees**"), (c) individuals that are employed through staffing agencies (the "**Temporary Employees**"), and (d) certain independent contractors retained by the Debtor (the "**Independent Contractors**" and, together with the Employees and the Temporary Employees, the "**Workforce**"), for, among other things, (i) compensation to the Workforce, (ii) expenses and expense reimbursements to the Employees, (iii) continuation of benefits provided to the Employees under all plans, programs and policies maintained or contributed to, and agreements entered into, by the Debtor prior to the Petition Date (the foregoing collectively, and as described in greater detail below, the "**Workforce Programs**"). In addition, the Debtor requests that the Court confirm its right to continue each of the Workforce Programs in the ordinary course of business during the pendency of this Chapter 11 Case in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of such case and to make

payments in connection with expenses incurred in the postpetition administration of any Workforce Program.

44. The Workforce Programs under which the Prepetition Workforce Obligations arise are described more fully the Employee Obligations Motion and include, without limitation, plans, programs, policies and agreements providing for (a) wages, salaries, vacation pay, sick pay and other accrued compensation; (b) reimbursement of business and other reimbursable expenses; and (c) benefits, with coverage as applicable for eligible spouses, domestic partners and dependents, in the form of medical, dental and vision coverage, coverage continuation under COBRA,[3] basic term life, supplemental life, accidental death and dismemberment, short-term disability, long-term disability, workers' compensation, and miscellaneous other benefits provided to the full-time Employees in the ordinary course of business.[4]

45. The Employee Obligations Motion also seeks authorization to pay any and all local, state and federal withholding and payroll-related or similar taxes relating to the Prepetition Workforce Obligations including, but not limited to, all withholding taxes, social security taxes and Medicare taxes. In addition, the Debtor seeks authorization to pay to third parties any and all amounts deducted from Employee paychecks by the Debtor for payments on behalf of Employees for benefit plans, insurance programs and other similar programs, or for garnishments, support payments, and similar items.

46. The Debtor also requests in the Employee Obligations Motion that, with respect to any Workforce Programs and Prepetition Workforce Obligations that are administered,

[3] See 29 U.S.C. §§ 1161 et seq.

[4] The Debtor may separately seek authorization to implement new postpetition retention, severance or similar employment protection programs designed to preserve Employee morale, encourage continuing employment and otherwise ameliorate the effects on Employees of this Chapter 11 Case. Pending approval of any such postpetition programs, the prepetition programs will continue in the ordinary course, subject to the provisions of Bankruptcy Code Section 503(c)(2).

insured or paid through a third-party administrator or provider, the Debtor requests authorization, in its discretion, to pay any prepetition claims of such administrator or provider in the ordinary course of business to insure the uninterrupted delivery of payments or other benefits to the Employees.

47. As of the Petition Date, the Debtor employed 36 Full-Time Employees, 4 Part-Time Employees, 1 Temporary Employee and 9 Independent Contractors. Approximately 18 of the Debtor's Full-Time Employees are employed at the Debtor's Arizona office which houses the bulk of the Debtor's developmental and customer service teams. The remaining 18 Full-Time Employees, which satisfy all of the Debtor's other employment needs, work at the Debtor's Delaware office.

48. I believe that the Debtor's ability to preserve its business and successfully maximize the value of the estate is dependent on the expertise and continued enthusiasm and service of its Workforce. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, I believe that the morale and, thus, the performance of the Workforce may be adversely affected. If the Debtor fails to pay the Prepetition Workforce Obligations in the ordinary course, its Employees and Temporary Employees will suffer extreme personal hardship and, in some cases, may be unable to pay their basic living expenses. Such a result would have a highly negative impact on Workforce morale and likely would result in unmanageable performance issues or turnover, thereby resulting in immediate and irreparable harm to the Debtor and its estate. In addition, the Debtor has determined that continuation of the Workforce Programs is vital to preserving and rebuilding Workforce morale during the pendency of the Chapter 11 Case and to minimizing the level of attrition that might otherwise occur.

D. Utilities Motion

49. In the Debtor's utilities motion (the "**Utilities Motion**"), the Debtor requests entry of interim and final orders approving procedures that would provide adequate assurance of payment to their utility service providers (the "**Utility Companies**") under Bankruptcy Code Section 366, while allowing the Debtor to avoid the threat of imminent termination of electricity, water, and phone and internet services (collectively, the "**Utility Services**") from those Utility Companies. Specifically, the Debtor requests entry of interim and final orders (a) approving the Debtor's deposit of $15,000 (which is approximately 50% of the estimated monthly cost of the Utility Services based on historical averages over the preceding 12 months) into a newly created, segregated, interest-bearing account, as adequate assurance of postpetition payment to the Utility Companies pursuant to Bankruptcy Code Section 366(b), (b) approving the additional adequate assurance procedures described below as the method for resolving disputes regarding adequate assurance of payment to Utility Companies, and (c) prohibiting the Utility Companies from altering, refusing, or discontinuing services to or discriminating against the Debtor except as may be permitted by the proposed procedures.

50. The Utility Services are crucial to the continued operations of the Debtor's business. Given the technological components of the Debtor's business, I believe that the Debtor could not operate its business without the Utility Services. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtor's business operations would be severely disrupted, and the Debtor could be forced to cease operations. Accordingly, the Debtor has proposed certain protections and procedures in the Utilities' Motion to provide additional assurance of payment for future services to the Utility Companies.

E. Critical Vendors Motion

51. Pursuant to the Debtor's critical vendors motion (the "**Critical Vendors Motion**"), the Debtor seeks entry of interim and final orders authorizing, but not directing, the Debtor to pay prepetition claims (the "**Critical Vendor and Service Provider Claims**") held by critical vendors and service providers (the "**Critical Vendors and Service Providers**") in an aggregate amount not to exceed $350,000 (the "**Critical Vendor Cap**"). In the Debtor's ordinary course of business, it relies on a range of goods and services that are necessary to operate its payment processing business. The Debtor purchases such goods and obtains such services from a limited number of vendors and independent contractors. Replacing such vendors—even when possible, which is often not the case—could also result in substantially higher costs for the Debtor and its estate.

52. With the assistance of its advisors, the Debtor spent significant time reviewing and analyzing its books and records, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practice to identify certain critical business relationships and/or suppliers of goods and services—the loss of which could materially harm its business.

53. The Debtor seeks to pay all or part of the Critical Vendor and Service Provider Claims up to the applicable Critical Vendor Cap to ensure that the Critical Vendors and Service Providers provide necessary goods and services to the Debtor on a postpetition basis. The Debtor does not, however, seek to pay any prepetition obligations of Critical Vendors or Service Providers arising under enforceable, long-term contractual relationships.

54. Because the Debtor anticipates that if the Sale is consummated, it will be able to satisfy all of the allowable claims against its estate, no Critical Vendor or Service Provider will receive more than it otherwise would have received following the close of the Sale or more than

any other unsecured creditor holding an allowable claim against the Debtor's estate. The payment of any Critical Vendor and Service Provider Claim, therefore, only changes the timing of satisfaction of any claims held by Critical Vendors and Service Providers.

55. Accordingly, the relief requested in the Critical Vendors Motion is narrowly tailored to facilitate the Debtor's efforts during the pendency of the Chapter 11 Case. By contrast, the harm suffered by the estate if essential goods and services provided by the Critical Vendors and Service Providers are withheld would be irreparable to the Debtor's ability to continue to operate in Chapter 11 and sell its assets pursuant to the proposed Sale, and so I submit that payment of the Critical Vendor and Service Provider Claims is a sound exercise of business judgment and necessary to preserve the value of the Debtor's business.

F. Debtor in Possession Financing Motion

56. This Chapter 11 Case is predicated on the Debtor's sale of substantially all its assets. To assist in funding this process, the Debtor engaged in what I believe were vigorous, arm's-length negotiations with Bancorp on the terms of a debtor in possession facility (the "**DIP Facility**"), which is appropriately sized to meet the Debtor's financing needs until the Sale is consummated. As a result of this process, the Debtor negotiated the DIP Facility to be provided by Bancorp on terms that I believe are fair and reasonable under the circumstances and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties.

57. The Debtor has an immediate and critical need to obtain post-petition financing under the DIP Facility and to use the Prepetition Collateral of the DIP Lender, including Cash Collateral, in order to permit the orderly continuation of the Debtor's business and its ongoing compliance with the Bancorp Agreements. Further, obtaining post-petition financing will enable the Debtor to make capital expenditures, pay professionals, satisfy other working capital and operational needs, pay interest, fees and expenses in accordance with the DIP Facility, pay

amounts approved by other order of this Court, and fund an orderly sale process of the Debtor's ongoing business and assets.

58. After efforts made by me and, at my direction, by Raymond James, the Debtor's financial advisor, I do not believe that alternative sources of financing are readily available on terms that are more favorable than those set forth in DIP Facility.

59. Because there is simply no viable alternative for the Debtor to maintain operations uninterrupted while facilitating both the sale of substantially all of its assets without the DIP Facility, the advances thereunder are vital to the preservation and maintenance of the going concern value of the Debtor's estate and to maximize the value of the Debtor's estate for the benefit of all parties in interest. Without access to the DIP Facility, the Debtor and its estate would suffer immediate and irreparable harm. Consummation of the DIP Facility and the use of Cash Collateral in accordance with the Budget are therefore in the best interest of the Debtor's estate.

CONCLUSION

60. The Debtor's ultimate goal in this Chapter 11 Case is to maximize the value of its estate for the benefit of its stakeholders. A sale of the Debtor's assets via Section 363 is the best way to accomplish this. In the near term, however, to minimize any loss of value to its business, the Debtor's immediate objective is to promote stability and maintain ordinary course operations during the early stages of this Chapter 11 Case, with as little disruption to operations as possible. I believe that if the Court grants the relief requested in each of the First Day Motions, the prospect for achieving these objectives and completing a successful sale of the Debtor's business will be substantially enhanced.

61. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief and respectfully request that all of the relief requested in the First Day Motions be granted, together with such other and further relief as is just and proper.

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

Executed this 4th day of August, 2014.

Phoenix Payment Systems, Inc.
Debtor and Debtor in Possession

Michael E. Jacoby
Chief Restructuring Officer

File a First Day Motion:

14-11848 Phoenix Payment Systems, Inc.

Type: bk	Chapter: 11 v	Office: 1 (Delaware)
Assets: y	Case Flag: VerifDue, PlnDue, DsclsDue	

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Mark D. Collins entered on 8/4/2014 at 7:11 AM EDT and filed on 8/4/2014

Case Name: Phoenix Payment Systems, Inc.
Case Number: 14-11848
Document Number: 3

Docket Text:
Affidavit/Declaration in Support of First Day Motion *(Declaration of Michael E. Jacoby in Support of Chapter 11 Petition and First Day Motions)* Filed By Phoenix Payment Systems, Inc. (Collins, Mark)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:W:\RVS\EPX\EPX - First Day Declaration.pdf
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=8/4/2014] [FileNumber=12610128-0]
[8dd090970277e86fc5cbebf10079be6a321f051172f0166d68716b625da6e0f8add7
92a017956f82cc19a364dd4fe35303b59d5d3524f52a608de6bda2fd6dd5]]

14-11848 Notice will be electronically mailed to:

Mark D. Collins on behalf of Debtor Phoenix Payment Systems, Inc.
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United States Trustee
USTPREGION03.WL.ECF@USDOJ.GOV

14-11848 Notice will not be electronically mailed to: