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13 Debtors' Mailing Address  
14 121 Gray Avenue  
15 Santa Barbara, CA 93101

16 **UNITED STATES BANKRUPTCY COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **SANTA BARBARA DIVISION**

19 In re:

20 **THE WALKING COMPANY**, a  
21 Delaware corporation, d/b/a Alan's Shoes,  
22 Footworks, Overland Trading Co., Sole  
23 Outdoors, and Martini Shoes; f/k/a TWC  
24 Acquisition Corporation; **BIG DOG USA,**  
25 **INC.**, a California corporation, d/b/a Big  
26 Dog Sportswear; f/k/a Fortune Dogs, Inc.;  
27 and **THE WALKING COMPANY**  
28 **HOLDINGS, INC.**, a Delaware  
corporation, f/k/a Big Dog Holdings, Inc.  
and 190<sup>th</sup> Shelf Corporation,

Debtors.

Case No.: 9:09-bk-15138-RR

[Jointly Administered with Case Nos.: 9:09-bk-15137-RR; 9:09-bk-15139-RR]

**NOTICE OF FILING OF REDLINE OF  
DEBTORS' SECOND AMENDED  
DISCLOSURE STATEMENT FOR  
DEBTORS' SECOND AMENDED JOINT  
CHAPTER 11 PLAN (DATED MARCH 9,  
2010)**

[No Hearing Required]

- Affects all Debtors
- Applies only to The Walking Company
- Applies only to Big Dog USA, Inc.
- Applies only to The Walking Company Holdings, Inc.



1           **TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES**  
2           **BANKRUPTCY JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE;**  
3           **AND ALL OTHER INTERESTED PARTIES:**

4           **PLEASE TAKE NOTICE** that the above-captioned debtors hereby submit a  
5 redline version of the *Second Amended Disclosure Statement for Debtors' Second*  
6 *Amended Joint Chapter 11 Plan Dated March 9, 2010* (the "Second Amended Disclosure  
7 Statement) showing the changes between the Second Amended Disclosure Statement and  
8 the *First Amended Disclosure Statement For Debtors' First Amended Joint Chapter 11*  
9 *Plan (Dated March 9, 2010)* filed on March 9, 2010 [Doc. No. 297].

10           The changes shown in this redline are made pursuant to the Court's direction at the  
11 March 12, 2010 hearing on the adequacy of debtors' disclosure statement. The exhibits to  
12 the Second Amended Disclosure Statement remain the same and are, therefore, not being  
13 resubmitted.

14  
15 DATED: March 17, 2010

/s/ M. Douglas Flahaut  
M. DOUGLAS FLAHAUT  
ARENT FOX LLP  
Attorneys for the Debtors and Debtors in  
Possession

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121 Gray Avenue  
9 Santa Barbara, CA 93101

10 **UNITED STATES BANKRUPTCY COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **SANTA BARBARA DIVISION**  
13

14 In re:  
15 **THE WALKING COMPANY**, a  
Delaware corporation, d/b/a Alan's  
16 Shoes, Footworks, Overland Trading  
Co., Sole Outdoors, and Martini Shoes;  
17 f/k/a TWC Acquisition Corporation;  
**BIG DOG USA, INC.**, a California  
18 corporation, d/b/a Big Dog  
Sportswear; f/k/a Fortune Dogs, Inc.;  
19 and **THE WALKING COMPANY**  
**HOLDINGS, INC.**, a Delaware  
20 corporation, f/k/a Big Dog Holdings,  
Inc. and 190<sup>th</sup> Shelf Corporation,  
21

Debtors.

- 22 [X] Affects all Debtors  
23 [ ] Applies only to The Walking  
24 Company  
25 [ ] Applies only to Big Dog USA, Inc.  
26 [ ] Applies only to The Walking  
27 Company Holdings, Inc.  
28

Case No. 09-15137, 09-15138, and 09-15139  
Jointly Administered under Case No. 09-  
15138

[Chapter 11]

**~~FIRST~~SECOND AMENDED  
DISCLOSURE STATEMENT FOR  
DEBTORS' ~~FIRST~~SECOND AMENDED  
JOINT CHAPTER 11 PLAN (DATED  
MARCH 9, 2010)**

**Disclosure Statement Hearing**

DATE: March 12, 2010  
TIME: 1:00 p.m.  
PLACE: 1415 State Street  
Santa Barbara, CA 93101

**Confirmation Hearing**

DATE: April ~~\_\_\_\_\_~~23, 2010  
TIME: ~~TBD~~1:00 p.m.  
PLACE: 1415 State Street  
Santa Barbara, CA 93101

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I.

**INTRODUCTION**

The Walking Company, Big Dog USA, Inc., and The Walking Company Holdings, Inc. are the debtors in these Chapter 11 bankruptcy cases. On December 7, 2009, the Debtors commenced bankruptcy cases by filing voluntary Chapter 11 petitions under the Bankruptcy Code. Since the Petition Date, as authorized under Bankruptcy Code Sections 1107 and 1108, the Debtors have operated their business and managed their affairs as debtors in possession. These Reorganization Cases are being jointly administered before the Bankruptcy Court.

Chapter 11 allows the Debtors, and under some circumstances, creditors and others parties in interest, to propose a plan of reorganization. The Plan may provide for the Debtors to reorganize by continuing to operate, to liquidate by selling assets of the estates, or a combination of both. The Debtors are the parties proposing the Plan sent to you in the same envelope as this document. THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE DEBTORS' PLAN. All capitalized terms not defined in this Disclosure Statement shall have the meaning provided in the Plan.

This is a joint reorganizing plan among all of the Debtors. In other words, the Debtors (also referred to as the "Proponents") seek to accomplish payments under the Plan primarily by: (a) reducing operating expenses by renegotiating ~~its~~[their](#) real estate leases; (b) reducing the amount due under ~~its~~[their](#) Notes and obtaining certain other economic concessions from the Noteholders and certain other creditors; (c) increasing ~~its~~[their](#) capital and liquidity through a \$10 million Capital Investment and a \$30 million Exit Financing; and (d) cash from operations. The \$10 million Capital Investment will be made pursuant to a Investor Commitment Letter between the Investors and the Debtors. Of this \$10 million Capital Investment, approximately \$8.1 million will be used to pay for the Debtors' reorganization costs, including Allowed Administrative and Priority Claim and Allowed General Unsecured Claims to be paid within 30 days of the Plan's Effective Date. Any remaining balance will be retained as working capital for the reorganized

1 company. The Effective Date of the proposed Plan is the first Business Day on which the  
2 conditions specified in Section IV.N. of the Plan are satisfied, but that is in no event later  
3 than the Closing Deadline under the WFRF Commitment Letter.

4 As discussed in detail in this Disclosure Statement, the Plan proposes to satisfy all  
5 of the prepetition obligations of the Debtors, with the exception only of certain voluntary  
6 discounts agreed to by the Noteholders and the possible impairment of Holdings' Existing  
7 Common Stock pursuant to terms of the Investor Commitment Letter. The Debtors  
8 believe that the Plan provides the greatest and earliest possible recoveries to creditors and  
9 stockholders, that confirmation of the Plan is in the best interest of all parties in interest,  
10 and that any alternative would result in further delay, uncertainty, and expense to the  
11 Estates. The Proponents therefore recommend that all eligible creditors and stockholders  
12 entitled to vote on the Plan cast their ballots to accept the Plan.

13 **A. Purpose of This Document**

14 This Disclosure Statement summarizes what is in the Plan, and tells you certain  
15 information relating to the Plan and the process the Court follows in determining whether  
16 or not to confirm the Plan.

17 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT**  
18 **TO KNOW ABOUT:**

- 19 (1) **WHO CAN VOTE OR OBJECT;**  
20 (2) **WHAT THE TREATMENT OF YOUR CLAIM IS (I.E., WHAT**  
21 **YOUR CLAIM WILL RECEIVE IF THE PLAN IS CONFIRMED),**  
22 **AND HOW THIS TREATMENT COMPARES TO WHAT YOUR**  
23 **CLAIM WOULD RECEIVE IN LIQUIDATION;**  
24 (3) **THE HISTORY OF THE DEBTORS AND SIGNIFICANT EVENTS**  
25 **DURING THE BANKRUPTCY;**  
26 (4) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE**  
27 **WHETHER OR NOT TO CONFIRM THE PLAN;**  
28 (5) **WHAT IS THE EFFECT OF CONFIRMATION; AND**

1           **(6) WHETHER THIS PLAN IS FEASIBLE.**

2           This Disclosure Statement cannot tell you everything about your rights. You should  
3 consider consulting your own lawyer to obtain more specific advice on how this Plan will  
4 affect you and what is the best course of action for you.

5           Be sure to read the Plan as well as the Disclosure Statement. If there are any  
6 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will  
7 govern.

8           The Bankruptcy Code requires a Disclosure Statement to contain “adequate  
9 information” concerning the Plan. The Bankruptcy Court (“Court”) has approved this  
10 document as an adequate Disclosure Statement, containing enough information to enable  
11 parties affected by the Plan to make an informed judgment about the Plan. Any party can  
12 now solicit votes for or against the Plan.

13           **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

14           THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS  
15 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN  
16 ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER  
17 CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTORS  
18 AND ON ALL CREDITORS AND INTEREST HOLDERS IN THESE  
19 REORGANIZATION CASES.

20           **1. Time and Place of the Confirmation Hearing**

21           The hearing where the Court will determine whether or not to confirm the Plan will  
22 take place on                      [April 23](#), 2010, at                      [1:00 p.m.](#), at the United  
23 States Bankruptcy Court, 1415 State Street, Santa Barbara, California 93101.

24           **2. Deadline For Voting For or Against the Plan**

25           If you are entitled to vote, it is in your best interest to timely vote on the enclosed  
26 ballot and return the ballot in the enclosed envelope to the Debtors’ Claims Agent,  
27 Kurtzman Carson Consultants LLC. Your ballot must be received by the Claims Agent  
28

1 by \_\_\_\_\_, on or before [April 20](#), 2010, at 4:00 p.m. (Pacific Time) or it will not  
2 be counted.

3 **3. Deadline For Objecting to the Confirmation of the Plan**

4 Objections to the confirmation of the Plan must be filed with the Court and served  
5 upon counsel for the Debtors, Arent Fox LLP, Attn: Douglas Flahaut, Esq. at 555 West  
6 Fifth Street, 48<sup>th</sup> Floor, Los Angeles, CA 90013 by \_\_\_\_\_, [April 9](#), 2010,  
7 at 4:00 p.m. (Pacific Time).

8 **4. Identity of Person to Contact for More Information Regarding the Plan**

9 Any interested party desiring further information about the Plan should contact  
10 Mette H. Kurth, Esq. or Douglas Flahaut, Esq. at Arent Fox LLP, 555 West Fifth Street,  
11 48<sup>th</sup> Floor, Los Angeles, CA 90013, telephone (213) 629-7400, and/or email  
12 [kurth.mette@arentfox.com](mailto:kurth.mette@arentfox.com) or [flahaut.douglas@arentfox.com](mailto:flahaut.douglas@arentfox.com).

13 **C. Disclaimer**

14 Please carefully read this document, the Plan, and the attached Exhibits. These  
15 documents explain who may object to confirmation of the Plan, who is entitled to vote to  
16 accept or reject the Plan, and the treatment that creditors and stockholders can expect to  
17 receive if the Court confirms the Plan. **The statements and information contained in  
18 the Plan and Disclosure Statement, however, do not constitute financial or legal  
19 advice. You should therefore consult your own advisors if you have questions about  
20 the impact of the Plan on your Claims or Interests.**

21 The financial data relied upon in formulating the Plan was prepared by the Debtors  
22 from information in their books and records and financial statements, as well as financial  
23 projections and appraisals prepared by the Debtors' financial advisors, The Clear  
24 Thinking Group LLC, and is the sole responsibility of the Debtors. The information  
25 contained in this Disclosure Statement is provided by Andrew D. Feshbach, the Chief  
26 Executive Officer and President of the Debtors, Anthony J. Wall, the Executive Vice  
27 President and General Counsel of the Debtors, and Roberta J. Morris, the Chief Financial  
28 Officer of the Debtors. The Plan Proponents represent that everything stated in the

1 Disclosure Statement is true to the Proponents' best knowledge. The Debtors'  
2 professionals and financial advisors have not independently verified this information.

3 The statements and information that concern the Debtors and that are set forth in  
4 this document constitute the only statements and information that this Court has approved  
5 for the purpose of soliciting votes to accept or reject the Plan. Therefore, no statements or  
6 information that are inconsistent with anything contained in this Plan and Disclosure  
7 Statement are authorized unless otherwise ordered by this Court. The Court has not yet  
8 determined whether or not the Plan is confirmable and makes no recommendation as to  
9 whether or not you should support or oppose the Plan.

10 **You may not rely on the Plan and Disclosure Statement for any purpose other**  
11 **than to determine whether to vote to accept or reject the Plan. Nothing contained in**  
12 **the Plan or Disclosure Statement constitutes an admission of any fact or liability by**  
13 **any party or may be deemed to constitute evidence of the tax or other legal effects**  
14 **that the Debtors' reorganization may have on entities holding Claims or Interests.**

15 Unless another time is expressly specified in the Disclosure Statement, all  
16 statements contained in this document are made as of February 1, 2010. Under no  
17 circumstances will the delivery of this Disclosure Statement or the exchange of any rights  
18 made in connection with the Plan create an implication or representation that there has  
19 been no subsequent change in the information included in this document. The Debtors  
20 assume no duty to update or supplement any of the disclosure information contained in  
21 this document, and they presently do not intend to undertake any such updates or  
22 supplements.

23 **CAUTIONARY STATEMENT:** Some statements in this document may  
24 constitute forward-looking statements within the meaning of the Securities Act and the  
25 Exchange Act, to the extent applicable. Such statements are based upon information  
26 available when the statements were made and are subject to risks and uncertainties that  
27 could cause actual results materially to differ from those expressed in the statements.  
28 Neither the SEC nor any state securities commission has approved or disapproved this

1 document.

2 **II.**

3 **BACKGROUND**

4 **A. Description and History of the Debtors' Business**

5 The Debtors are The Walking Company Holdings, Inc. ("Holdings"), a Delaware  
6 corporation, and its two wholly owned subsidiaries, The Walking Company ("TWC"), a  
7 Delaware corporation, and Big Dog USA, Inc. ("Big Dog"), a California corporation,  
8 d/b/a "Big Dog Sportswear." Headquartered in Santa Barbara, California, the Debtors  
9 consist of two distinct retail operations. The Debtors' operations are largely focused on  
10 TWC, which is a leading specialty retailer of authentic comfort footwear, operating 207  
11 stores in premium malls across the nation. TWC generated approximately 93% of the  
12 Debtors' sales in 2009. Big Dog is a retailer of a lifestyle collection of popular-priced T-  
13 shirts, casual sportswear, and accessories featuring the Big Dogs trademark. Together,  
14 TWC and Big Dog employ over 1,600 individuals across the country.

15 **1. Walking Company Holdings, Inc.**

16 Holdings is a holding company trading on the pink sheets under the symbol  
17 "WALK.PK" Holdings' assets consist primarily of the stock of its two operating  
18 subsidiaries (TWC and Big Dog) and the trademarks, copyrights and other intellectual  
19 property used in the operation of TWC and Big Dog, which Holdings licenses to such  
20 subsidiaries. The Debtors use a variety of trademarks that it owns, including the U.S.  
21 registered trademarks THE WALKING COMPANY®, BIG DOGS®, BIG DOG  
22 SPORTSWEAR®, and a dog logo.

23 **2. Big Dog USA, Inc., d/b/a Big Dog Sportswear**

24 Big Dog products have been sold since 1983, but until Big Dog and its business  
25 were acquired by Holdings in 1992, its operations were limited. Big Dog's product line  
26 originally concentrated on its branded collection of T-shirts, shorts, and other casual  
27 sportswear featuring graphic designs focused on the BIG DOGS® trademark and a dog  
28 character known as "Big Dog." Big Dog develops, markets, and retails this clothing line

1 and related accessories and gifts for men, women, and children. In the years following its  
2 acquisition, Big Dog leveraged the Big Dog brand through expansion of its product line  
3 and growth of its retail chain in outlet malls throughout the United States, as well through  
4 a catalog and Internet business and certain other venues. At its height, Big Dog revenues  
5 exceeded \$100 million annually, and it operated more than 200 stores.

6 Big Dog and its management team have a long history as an active part of the Santa  
7 Barbara business community. For 14 consecutive years, Big Dog organized the annual  
8 Big Dog Parade and Canine Festival, which attracted dog lovers and families from across  
9 the country to Santa Barbara to compete in the largest dog parade in the country. All  
10 proceeds from the event went directly to the Big Dog Foundation, a 501(c) non-profit  
11 organization dedicated to bettering the lives of dogs, children, and dogs that help people.  
12 Through its existence, the Big Dog Foundation has made significant donations of  
13 remainder and difficult-to-sell garments to local and national charities in need. Beginning  
14 in 2007, Big Dog's charitable activities have been largely suspended, and the Big Dog  
15 Parade scheduled for 2009 was cancelled. However, members of Big Dog's management  
16 team continue to participate as members of the board of directors of the Big Dog  
17 Foundation.

18 After years of early growth, Big Dog reached a level of maturity in its number of  
19 stores and breadth of product. In 2007 and 2008, Big Dog began to incur significant  
20 losses as customer traffic and sales in its outlet-based stores declined. After attempts to  
21 sell Big Dog in the fall 2007 and early 2008 were unsuccessful, in mid-2008 Big Dog  
22 implemented a successful out-of-court workout of Big Dog, through which Big Dog was  
23 able to stem further losses by reducing the chain from over 140 stores to the two stores  
24 that remain at present. Big Dog's remaining operations are limited, consisting mainly of  
25 Internet sales. The Debtors are considering a business plan to revitalize the BIG DOGS  
26 brand, which may include, among other things, reopening certain Big Dog stores on a  
27 limited basis.

28

1 Although the shutdown of the Big Dog retail chain stemmed further operating  
2 losses, it imposed on the Debtors a workout cost of over \$3 million, reduced overall  
3 revenue, created illiquidity, and burdened TWC with a greater share of the Debtors'  
4 overhead costs.

5 **3. The Walking Company**

6 Founded in 1991, TWC is a retailer of high-quality, technically designed comfort  
7 footwear and accessories for men and women featuring leading comfort brands from  
8 around the world, including ECCO®, Dansko®, UGG®, MBT®, and Aetrex®. When  
9 TWC was acquired by Holdings in 2004, it was comprised of 72 retail stores located  
10 primarily in regional malls.

11 TWC seeks out and offers to its customers shoe brands that are of high quality,  
12 integrate comfort features, and are not widely distributed. TWC features a number of  
13 European and other foreign comfort shoe brands not widely found in other US shoe  
14 retailers. TWC stores offer a high level of customer service through a trained,  
15 knowledgeable sales staff that informs customers of the health and comfort benefits and  
16 the technical features of TWC's footwear. TWC's commitment to knowledgeable  
17 customer service enhances its ability to generate repeat business and attract new  
18 customers.

19 Although marketing focus is on baby boomers and working professionals, TWC's  
20 customers include men and women of all ages. As baby boomers age, there is an  
21 increasing focus on comfort footwear for both work and play. In addition, many of  
22 TWC's brands are popular with working professionals such as teachers, medical staff,  
23 foodservice personnel and others who spend long days on their feet. The majority of  
24 TWC's footwear products range from between \$80 and \$200. TWC utilizes its  
25 preeminence in the comfort market to seek strong vendor relationships and widespread  
26 customer recognition.

27 TWC stores are typically located in leading regional malls in prosperous urban  
28 areas where TWC believes demographics are favorable. In making site selections, TWC



1 also considers a variety of other factors, including proximity to large population centers,  
2 area income, the prestige and potential customer-draw of the other tenants in the center or  
3 area, rent and operating costs, store location and visibility within the center, and the  
4 accessibility and visibility of the center from nearby thoroughfares. TWC store size  
5 generally ranges between 1,400-1,700 square feet, and some industry reports indicate that  
6 TWC stores generate twice the sales-per-square-foot of other comfort shoe retailers.

7 **B. The Expansion of The Walking Company's Retail Operation**

8 After acquiring TWC the year before, in 2005 the Debtors tested the expansion of  
9 TWC's retail stores by opening 12 new stores featuring an updated look and appeal. This  
10 new look was a key part of TWC's implementation of an effective, coherent marketing  
11 image and strategy. This strategy has been implemented through a newly-developed store  
12 design and supporting marketing endeavors. Through new store development and  
13 refitting old stores, the large majority of the chain now has the new design. TWC further  
14 continues its brand awareness through consistent store layout and image, collateral  
15 materials (in-store posters, etc.), and development of brand-identifying trademarks and  
16 slogans.

17 Encouraged by strong sales results and profitability in its test stores, TWC entered  
18 a period of strategic expansion of its store chain, opening approximately 140 new stores  
19 and more than doubling in size from 2006 through 2008 by leasing and building-out new  
20 stores as well as by acquiring existing retail footwear stores for conversion into TWC  
21 stores. In September 2005, TWC acquired the assets of Footworks, a division of the  
22 privately held shoe retailer Bianca of Nevada, Inc. In January 2006, it acquired  
23 substantially all the assets of Steve's Shoes, Inc., one of the largest independent comfort  
24 shoe retailers in the country, through a bankruptcy auction. And in January 2008, it  
25 acquired substantially all assets of Natural Comfort Footwear, Inc., one of the largest  
26 independent comfort shoe retailers in Florida. All of these stores were converted to TWC  
27 stores. TWC has also developed an Internet presence to generate sales and promote its  
28 store-based business.

1 TWC's cost to open a store in 2007, including leasehold improvements and  
2 furniture and fixtures, was approximately \$293,000 per store. The average per store initial  
3 inventory for the new 2007 stores was approximately \$201,000 and pre-opening expenses  
4 averaged approximately \$18,000 per store. TWC financed the capital costs of its  
5 expansion from its revenues and also through the issuance in 2007 of \$18.5 million of the  
6 *8.375% Convertible Notes due 2015*.

7 During this period of expansion, the Debtors built up their infrastructure and  
8 overhead to accommodate the expanded TWC chain. Today, TWC is the nation's leading  
9 specialty retailer of authentic comfort footwear, operating 207 stores in premium malls  
10 across the nation.

11 **C. Events Leading to Chapter 11 Filing**

12 From 2005 through 2008, as the Debtors expanded their TWC operations across  
13 the country, they also experienced significant growth in TWC product sales. TWC's total  
14 net annual sales increased from \$179.1 million in 2005, to \$218.6 million in 2006, to  
15 \$233.3 million in 2007, and to \$241.5 million in 2008. TWC's gross profits for this  
16 period increased from \$98.8 million in 2005, to \$116.9 million in 2006, to \$122.4 million  
17 in 2007, and decreased to \$117.5 million in 2008.

18 During this period of expansion, the Debtors agreed to the high rent levels then  
19 required by landlords based on industry-wide customer traffic and sale assumptions.  
20 However, these assumptions failed to materialize when the economy in general, and the  
21 retail business in particular, went into serious decline in 2008 and 2009. The Debtors'  
22 total net annual sales for 2008 of approximately \$242 million—while still representing an  
23 increase over 2007 sales—were lower than had been projected. When combined with  
24 significant expansion costs related to the growth of TWC, as well as the one-time costs  
25 associated with the downsizing of Big Dog, the Debtors generated a loss from operations  
26 of \$5.3 million in 2008.

27 Mall traffic and retail sales continued to be weak throughout 2009. As the retail  
28 and real estate markets continued to decline, the vast majority of the Debtors' leases

1 became burdened with substantially over-market rents. And for the first time during this  
2 period, the Debtors' gross sales decreased. In 2009, the Debtors' gross sales were \$193  
3 million, and the Debtors generated a loss from operations of \$8.1 million.

4         Meanwhile, as TWC began incurring losses in 2008 and throughout 2009, its  
5 borrowing base diminished and the Debtors' availability under its credit line with Wells  
6 Fargo Retail Finance (or "WFRF") was reduced accordingly. With its ability to weather  
7 the continuing economic recession and the depressed retail environment impaired, the  
8 Debtors sought to strengthen their financial capital position. In early 2009, the Debtors  
9 made inquiries to various financial firms about a possible capital investment. Those  
10 efforts were unsuccessful largely due to concerns about the Debtors lack of operating  
11 profits and the locked-in high rents in their lease portfolio. The Debtors also made  
12 inquiries within the retail industry in early 2009 regarding potential interest in the  
13 purchase of the Debtors. But potential acquirers expressed similar concerns about the  
14 Debtors' lack of operating profits and over-market lease rents, especially with respect to  
15 TWC's newer stores.

16         While pursuing these options during early 2009, the Debtors also proceeded to  
17 develop and sought to implement a turn-around plan in an effort to strengthen their  
18 financial capital position. Some of the key elements of the turn-around plan, which has  
19 focused on cost cutting, financial restructuring, and efforts to renegotiate its lease  
20 obligations, include the following:

- 21         a) Holdings voluntarily delisted itself from NASDAQ and de-registered with  
22         the SEC in order to relieve itself of the costs of complying with SEC  
23         reporting, Sarbanes-Oxley, and other requirements of being a publicly  
24         registered and traded company;
- 25         b) Employee compensation was reduced and over 500 employees (largely at  
26         Big Dog) were terminated;
- 27         c) The Debtors implemented year-over-year inventory reductions of nearly  
28         35% in order to generate additional cash and liquidity;

- 1 d) The Debtors obtained from WFRF, their secured lender, an increase in their  
2 available line of credit as a result of personal guaranties provided to WFRF  
3 by Andrew D. Feshbach and Fred Kayne;<sup>1</sup>
- 4 e) The Debtors negotiated certain concessions from their Noteholders, who  
5 among other things agreed to allow quarterly cash interest payments to be  
6 paid through PIK Interest for up to two years and who agreed to extend the  
7 Notes' maturity dates in exchange for a subordinated security interest in  
8 certain assets of Holdings and its subsidiaries; and
- 9 f) The Debtors actively sought from their landlords reductions of their now  
10 above-market rents for the remainder of 2009 so that their store operating  
11 expenses could be brought in line with the now reduced customer traffic and  
12 retail sales being experienced at malls across the country.

13 While the Debtors were successful in implementing all other elements of their turn-  
14 around plan and achieving significant cost reductions, their landlords largely refused to  
15 provide meaningful rent reductions. After originally proposing rent reductions to the  
16 landlords in early spring of 2009, the Debtors spent the entire balance of 2009 through the  
17 Petition Date persistently seeking much needed rent reductions, but without meaningful  
18 success. The Debtors' landlords, while acknowledging that many of the Debtors rents are  
19 above-market and/or above the percentage of sales at which they were originally set,  
20 largely refused the requested reductions.

21 Accordingly, it became apparent that the Debtors could not consensually obtain the  
22 rent concessions needed to strengthen its financial capital position sufficiently to weather  
23 the continuing economic recession. With the capital markets and buyout environment  
24 remaining dormant, the Debtors concluded that it was necessary to pursue a "right sizing"  
25 strategy that would permit them to adjust their lease portfolio, reorganize around their  
26

27 \_\_\_\_\_  
28 <sup>1</sup> In consideration of providing his personal guaranty of the WFRF overadvance facility to Debtors, described in  
Section I.I.C. above, Mr. Kayne was paid a fee of \$43,616.44.

1 profitable stores, and eliminate those stores whose continued operation would prevent a  
2 successful reorganization.

3 **D. The Debtors' Progress in Pre-Negotiating a Plan of Reorganization**

4 As noted above, TWC more than doubled in size by adding 140 stores to its  
5 portfolio from 2006 through 2008, which is now widely recognized as having been the  
6 height of the commercial real estate market. Today, the large majority of TWC's leases  
7 have over-market rents. During the months preceding the Petition Date, the Debtors  
8 developed a turnaround plan through which they would divest their unprofitable and  
9 marginal leases immediately after commencing these Reorganization Cases, and retain  
10 those stores that are profitable and contributing significantly to the Debtors' revenue, as  
11 well as its Internet sale portal. The Debtors commenced these Reorganization Cases in  
12 order to implement that strategy, which would have allowed the Debtors to emerge from  
13 chapter 11 with profitable operations and generating \$140 million in annual revenue.

14 Based on this reorganization plan, the Debtors secured debtor-in-possession  
15 financing from WFRF. In addition, WFRF and the Debtors began negotiating the terms of  
16 the Exit Financing for the Debtors, and on December 4, 2009, WFRF provided the  
17 Debtors with an initial letter of interest regarding an exit financing arrangement. In  
18 addition, after substantial negotiations, the Debtors obtained a commitment in principle  
19 with respect to the key terms of a chapter 11 plan under which, among other things, an  
20 Investor group lead by Richard Kayne of Kayne Anderson Capital Advisors, LP (and  
21 other Investors whom he may have participate with him) would contribute \$10 million to  
22 recapitalize the Debtors pursuant to a confirmed plan of reorganization. Finally, the  
23 Debtors initiated discussions with certain key vendors, who began forming an *ad hoc*  
24 trade committee during the weeks prior to the Petition Date. Discussions with these  
25 vendors were very constructive, resulting in commitments from certain vendors to  
26 continue to ship product to the Debtors during the course of these Reorganization Cases.

27 With these pre-negotiated commitments and financings in place, the Debtors  
28 commenced these Reorganization Cases on December 7, 2009, in order to implement their

1 “right-sizing” strategy and reorganize their business. As discussed in greater detail below,  
2 this effort has been significantly more successful than originally anticipated, resulting in  
3 the filing of this Chapter 11 Plan, which proposes to satisfy all of the prepetition  
4 obligations of the Debtors, with the exception only of certain voluntary discounts agreed  
5 to by the Noteholders and the possible impairment of Holdings’ Existing Common Stock  
6 pursuant to the terms of the Investor Commitment Letter.

7 **E. Principals/Affiliates of Debtors’ Business**

8 Both TWC and Big Dog are affiliates of Holdings, and Holdings is an affiliate of  
9 each of those entities, on account of Holdings’ ownership of 100% of the security interests  
10 in TWC and Big Dog.

11 Fred Kayne is the Chairman of the Board of Directors of Holdings and controls  
12 Holdings through his living trust’s ownership of approximately 56% of Holdings’  
13 outstanding stock, and as a result is an affiliate of the Debtors. Richard Kayne is Fred  
14 Kayne’s brother, and as a result is considered to be an insider of the Debtors.

15 **F. Management of the Debtors Before and After the Bankruptcy**

16 The Debtors’ key management prior to the filing of the petition remain in charge of  
17 the Debtors as of the filing of this Disclosure Statement, and Debtors intend to emerge  
18 from bankruptcy with the same key management.

19 **1. The Debtors’ Board of Directors**

20 The Board of Directors of each of the Debtors before, during, and after bankruptcy  
21 will be comprised of: (a) Fred Kayne, who is Chairman and also the majority stockholder  
22 of Holdings; (b) Andrew D. Feshbach, who is also the Debtors’ Chief Executive Officer;  
23 and (c) David Walsh, does not occupy a management position with Debtors.<sup>2</sup>

24 **2. The Debtors’ Management Team**

25 The following is information regarding the Debtors’ officers and members of the  
26 management team that was in place prior to the filing of the petition, has continued to  
27

28 <sup>2</sup> As of January 27, 2010, Mr. Walsh accepted a position as Senior Managing Director and Portfolio Manager with  
Kayne Anderson Capital Advisors, L.P., which is controlled by Richard Kayne

1 manage the Debtors during these Reorganization Cases, and is expected to be employed  
2 by Debtors as of the Effective Date:

3 **a. Andrew D. Feshbach, Chief Executive Officer**

4 Mr. Feshbach co-founded Holdings in May 1992, and he has served as the  
5 President and Chief Executive Officer of Big Dog and Holdings and a member of their  
6 respective Boards of Directors since that time. He is also the Chief Executive Officer,  
7 President, and a member of the Board of Directors of TWC, which Holdings acquired in  
8 2004 through a bankruptcy auction.

9 Prior to 1992, Mr. Feshbach served as a Vice President of Fortune Financial, a  
10 private merchant banking firm owned by Holdings' Chairman and majority stockholder,  
11 Fred Kayne. Prior to that, he was a partner in Maiden Lane, a merchant bank, and a Vice  
12 President in the Mergers and Acquisitions Group of Bear Stearns & Co. Mr. Feshbach  
13 holds an M.B.A. degree from Harvard Business School and a B.A. degree in Economics  
14 (Phi Beta Kappa) from the University of California at Berkeley.

15 **b. Roberta J. Morris, Chief Financial Officer**

16 Ms. Morris joined Holdings in 1993 and serves as the Debtors' Chief Financial  
17 Officer. Ms. Morris is a certified public accountant. Prior to joining Holdings, Ms. Morris  
18 was employed as a Senior Audit Manager with Deloitte & Touche LLP. Prior to 1993,  
19 Ms. Morris served as a Senior Audit Manager at Deloitte & Touche LLP, an international  
20 public accounting firm. Prior to that, she was with Kenneth Leventhal & Company, a real  
21 estate boutique accounting firm. Ms. Morris holds an accounting degree from California  
22 State University Northridge and is a Certified Public Accountant.

23 **c. Anthony J. Wall, Executive Vice President and General Counsel**

24 Mr. Wall joined Holdings in 1994 and serves as their Executive Vice President—  
25 Business Affairs, General Counsel and Secretary. Prior to joining Holdings, Mr. Wall  
26 was a partner in the corporate department of the international law firm of Gibson, Dunn &  
27 Crutcher. Mr. Wall is an Order of the Coif graduate of USC Law School and is admitted  
28 to the California bar. Mr. Wall also provides occasional legal and business services to

1 certain other private companies controlled by Fred Kayne, the Chairman and controlling  
2 stockholder.

3 **d. Lee M. Cox, Senior Vice President-Retail**

4 Mr. Cox joined the Debtors in 2000 and serves as the Senior Vice President –  
5 Retail of TWC. He has been a retail executive for over 20 years with extensive  
6 experience in operations, marketing and real estate. Prior to joining the Debtors, Mr. Cox  
7 was Director of Retail Stores for Adidas America for seven years. Before that he served  
8 as an account executive for Sonoma Real Estate. Mr. Cox holds a business degree from  
9 the University of Colorado.

10 **e. Michael Grenley, Senior Vice President-Merchandising**

11 Mr. Grenley joined the Debtors in 1994 and serves as TWC's Senior Vice  
12 President – Merchandising. He has been a retail executive for over 29 years with  
13 extensive buying experience in shoes, apparel and accessories. Prior to joining the  
14 Debtors, Mr. Grenley was Vice President of Merchandise at Macy's California. Prior to  
15 joining the Debtors, Mr. Grenley was the Vice President and Divisional Merchandise  
16 Manager at Macy's West / Bullocks. Mr. Grenley holds an economics degree from The  
17 University of California at Davis.

18 **G. Current and Historical Financial Conditions**

19 **1. The Debtors' Assets**

20 Based on Holdings' books and records, as of the Petition Date, Holdings'  
21 unaudited, balance sheet assets totaled approximately \$80.9 million. These assets  
22 consisted primarily of 100% of the stock of TWC, with a book value of \$78.6 million, and  
23 100% of the stock of Big Dog, with a book value of \$2.1 million, \$200,000 in  
24 miscellaneous assets, and intellectual property assets with an unknown value.

25 Based on TWC's books and records as set forth in the Debtors' Schedules, as of the  
26 Petition Date, TWC's unaudited, balance sheet assets totaled approximately \$79.1 million.  
27 Of this amount, the Debtors held, on a book value basis, approximately \$40.3 million in  
28 net inventories; fixed assets (including property and equipment) of \$33.5 million, net of



1 depreciation; \$3.6 million in accounts receivable; \$1.4 million in cash; other assets  
2 totaling \$300,000; and intellectual property and customer lists with an unknown value.<sup>3</sup>

3 Based on Big Dogs' books and records as set forth in the Debtors' schedules, as of  
4 the Petition Date, Big Dog's unaudited, balance sheet assets totaled approximately \$10.9  
5 million. These assets consisted primarily of an \$8.8 million intercompany balance due  
6 from TWC, \$2.0 million in inventory, \$200,000 in cash and miscellaneous assets, and  
7 intellectual property and customer lists with an unknown value.<sup>4</sup>

8 The identity and fair market value of each Estate's assets are listed in Exhibit A so  
9 that you can assess what assets are available to satisfy Claims and to evaluate the overall  
10 value of the Estates.

## 11 **2. The Debtors' Liabilities**

12 Based on Holdings' books and records, as of the Petition Date, Holdings'  
13 unaudited, balance sheet liabilities totaled approximately \$50.5 million. These liabilities  
14 included approximately \$20.2 million in principal and accrued PIK Interest owing under  
15 the Notes; \$25.7 million on account of Holdings' guaranty of obligations under the  
16 Prepetition Credit Facility owing to WFRF; \$1.7 million on account of Holdings'  
17 guaranty of the Atchinson Note; \$1.2 million owing under a capital lease; approximately  
18 \$1.0 million on account of the Employee Stock Option Notes; \$500,000 in priority wage  
19 claims; and \$200,000 in unsecured landlord claims.

20 Based on TWC's books and records, as set forth in the Debtors' Schedules, as of  
21 the Petition Date, TWC's unaudited, balance-sheet liabilities totaled approximately \$68.5  
22 million. This amount included approximately \$20.2 million on account of TWC's  
23 guaranty of the Notes; \$25.7 million outstanding as a co-borrower with Big Dog under the  
24 Prepetition Credit Facility owing to WFRF; an intercompany balance of \$8.8 million due  
25 to Big Dog; priority unsecured claims consisting of \$1.426 million in employee wages and

26 \_\_\_\_\_  
27 <sup>3</sup> In addition, the Debtors' books and records included \$1.5 million of unscheduled assets relating to such  
intangibles as deferred taxes and prepaid assets.

28 <sup>4</sup> In addition, the Debtors' books and records included \$11.8 million of unscheduled assets relating to such  
intangibles as deferred taxes and prepaid assets.

1 benefits, \$900,000 in outstanding gift certificates and customer refund checks, and \$1  
2 million in sales and personal property taxes; and general unsecured claims comprised of  
3 \$1.7 million outstanding under the Atchinson Note, \$8.3 million in trade claims (of which  
4 approximately \$3.5 million may be entitled to administrative priority under Bankruptcy  
5 Code section 503(b)(9)), and \$400,000 in general liability claims.<sup>5</sup>

6 Based on Big Dog's books and records, as set forth in its Schedules, as of the  
7 Petition Date, Big Dog's unaudited, balance sheet liabilities totaled approximately \$46.6  
8 million. These liabilities included approximately \$20.2 million on account of Big Dog's  
9 guaranty of Holdings' obligations under the Notes; \$25.7 million outstanding as a co-  
10 borrower with TWC under the Prepetition Credit Facility owing to WFRF; priority  
11 unsecured claims consisting of \$42,000 in employee wages and benefits, \$24,000 in  
12 outstanding gift certificates, and \$65,000 in sales and personal property taxes; and general  
13 unsecured claims comprised of \$177,000 in trade claims and \$349,000 in general liability  
14 claims.<sup>6</sup>

15 **a. The Prepetition Facility and DIP Facility**

16 WFRF, as successor in interest to Wells Fargo Retail Finance II, LLC, a Delaware  
17 limited liability company, as arranger and administrative agent for the lenders, and TWC  
18 and Big Dog are parties to a *First Amended, Restated, and Consolidated Loan and*  
19 *Security Agreement, dated as of July 7, 2005* (as amended by nine amendments thereto,  
20 the "Prepetition Credit Facility"), and Holdings is a guarantor under this facility. The  
21 Prepetition Credit Facility, which has been rolled into the DIP Facility, provides for a total  
22 commitment of \$60 million, with the ability for the Debtors to issue documentary and  
23 standby letters of credit of up to \$8 million. The Debtors' ability to borrow under the  
24 facility is determined using an availability formula based on eligible assets, and pursuant  
25

26 \_\_\_\_\_  
27 <sup>5</sup> In addition, the Debtors' books and records included \$14.7 million of unscheduled liabilities relating to deferred  
rent, tenant improvement allowances, capitalized lease liabilities, and sales returns and other reserves.

28 <sup>6</sup> In addition, the Debtors' books and records included \$400,000 of unscheduled liabilities for sales returns and  
other reserves.

1 to this formula, the Debtors had approximately \$100,000 in availability under the DIP  
2 Facility on December 4, 2009.

3 As part of the earlier attempt to turnaround the Debtors' operations outside of  
4 bankruptcy, in March 2009 Fred Kayne and Andrew D. Feshbach provided personal  
5 guaranties of the Debtors' obligations to WFRF in order to obtain an over-advance  
6 facility. Such over-advance facility was paid in full by the Debtors in October 2009, and  
7 the guaranties were then withdrawn.

8 As of the Petition Date, the approximate loan balance under the Prepetition Credit  
9 Facility was \$25.7 million and there were no outstanding letters of credit. During the  
10 course of these Reorganization Cases, pursuant to the DIP Order, WFRF's prepetition  
11 secured claim has been repaid in full and WFRF has made, and shall continue to make  
12 through the Effective Date, postpetition debtor in possession financing loans. (The total  
13 amount outstanding under the DIP Facility as of December 31, 2009 was \$7.1 million,  
14 which amount may fluctuate based on the Debtors' usage of the DIP Facility.) The  
15 interest rate under the Prepetition Credit Facility ranges from the bank's base rate plus a  
16 margin of 0.5% or a LIBOR loan rate plus a margin ranging between 1.75% and 2.25%  
17 depending upon the average excess availability under the Prepetition Credit Facility. As  
18 of the Petition Date, the interest rate for the outstanding base rate loans was 3.75% and the  
19 interest rate for the outstanding LIBOR rate loans was between 2.489% and 2.492%.

20 The Prepetition Credit Facility is collateralized by substantially all of the Debtors'  
21 assets and requires daily, weekly, and monthly financial reporting as well as compliance  
22 with financial, affirmative, and negative covenants. Based on the value of WFRF's  
23 collateral, which includes approximately \$39.6 million in net inventories, the outstanding  
24 indebtedness owing under the Prepetition Credit Facility and the DIP Facility is more than  
25 fully secured.

26 **b. 8.375% Convertible Notes due 2015**

27 On April 3, 2007, Holdings entered into a *Convertible Note Purchase Agreement*  
28 with certain purchasers, including some of the Debtors' officers, pursuant to which

1 Holdings issued and sold \$18.5 million of Notes, interest payable quarterly. The net  
 2 proceeds of the Notes, after debt issuance costs, were used to reduce the outstanding  
 3 balance of Debtors' Prepetition Credit Facility, and thereby to support TWC's store  
 4 expansion throughout 2007 and 2008.

5 Among other features, the Notes, are convertible into fully paid and non-assessable  
 6 shares of Holdings' Common Stock to an aggregate of up to 1,027,777 shares at any time  
 7 after the issuance date, at an initial conversion price of \$18.00 per share. If the Notes are  
 8 not converted before their maturity, they are to be redeemed by the Debtors on the  
 9 maturity date at a redemption price equal to 100% of the principal amount of the Notes  
 10 then outstanding, plus any accrued and unpaid interest. Payment on the Notes is subject  
 11 to a subordination agreement in favor of WFRF.

12 The Noteholders are:

13	<b>Noteholder</b>	<b>Insider (Y/N)</b>	<b>Principal Amount</b>	<b>PIK Interest</b>
14				
15	Blackwell Partners	N	\$1,325,000.00	\$93,202.22
16	Cotsen Family	N	\$5,000,000.00	\$351,706.50
17	Foundation			
18	David Wolf	N	\$500,000.00	\$35,170.65
19	Doug Nilsen	N	\$200,000.00	\$14,068.26
20	Gary Lieberthal	N	\$150,000.00	\$10,551.20
21	Trustee			
22	Joel Reims and	N	\$250,000.00	\$17,585.33
23	Kathleen Ann Reims,			
24	TTEES			
25	Kayne Anderson	N	\$3,900,000.00	\$274,331.07
26	Capital Income			
27	Partners			
28	RBC Dain Rauscher	N	\$500,000.00	\$35,170.65

1	Robert P. Abate	N	\$200,000.00	\$14,068.26
2	Trustee			
3	Kayne Foundation	N	\$2,500,000.00	\$175,853.25
4	Anthony J. Wall	Y	\$500,000.00	\$35,170.65
5	Lee Cox	Y	\$360,000.00	\$25,322.87
6	Michael Grenley	Y	\$900,000.00	\$63,307.17
7	Richard Kayne,	Y	\$675,000.00	\$47,480.38
8	Trustee Living Trust			
9	Robert Schnell IRA	Y	\$1,000,000.00	\$70,341.30
10	Roberta Morris	Y	\$360,000.00	\$25,322.87
11	Susan Minier	Y	\$180,000.00	\$12,661.43

12 As part of the earlier turnaround effort discussed above, effective as of April 1,  
 13 2009, the Debtors negotiated with the Noteholders an agreement to amend the Notes to,  
 14 among other things, provide that the interest on the Notes could be paid through PIK  
 15 Interest for up to eight quarters, at the Debtors' option, beginning with interest accrued  
 16 from April 1, 2009, and to extend the maturity of the Notes by three years. In exchange  
 17 for these concessions, among other things, the Noteholders required that TWC and Big  
 18 Dog guarantee Holding's obligations under the Notes, and that the Debtors secure their  
 19 obligations under the Notes with a junior security interest in substantially all of their  
 20 assets (excluding certain trademarks and other intellectual property relating to Big Dog),  
 21 subject and subordinated to the security interests of WFRF under the Prepetition Credit  
 22 Facility.

23 In addition, the following Noteholders—Kayne Anderson Capital Income Partners  
 24 (QP), LP; the Cotsen Family Foundation; The Kayne Foundation, Richard A. Kayne,  
 25 Trustee; and Richard & Suzanne Kayne Living Trust dated 1/14/99—who were  
 26 collectively owed approximately \$12 million in principal amount of Notes, agreed to  
 27 amend their Notes to provide that the outstanding principal amount of the Notes would be  
 28

1 reduced by 25%, conditioned upon, among other things, the Debtors' landlords agreeing  
2 to grant certain rent concessions to the Debtors no later than December 1, 2009. The  
3 Debtors were not able to achieve these rent concessions.

4 **c. General Unsecured Priority Claims**

5 As of the Petition Date, the Debtors' books and records reflected \$457,000 in  
6 priority wage claims owed by Holdings, \$1.426 million in priority wage claims owed by  
7 TWC, and \$42,300 in priority wage claims owed by Big Dog. The books and records for  
8 TWC and Big Dog also reflected approximately \$1.02 million priority unsecured claims  
9 on account of outstanding gift certificates and customer refund checks. Finally, the books  
10 and records for TWC and Big Dog reflected approximately \$1 million in priority  
11 unsecured claims for sales and personal property taxes outstanding as of the Petition Date.  
12 These claims have been all been satisfied, or will be satisfied, in the ordinary course of the  
13 Debtors' business pursuant to Orders entered by the Bankruptcy Court in December 2009.

14 **d. General Unsecured Non-Priority Claims**

15 The General Unsecured Non-priority claims, as listed on the Debtors' Schedules,  
16 reflect the following amounts General Unsecured Non-Priority Claims outstanding as of  
17 the Petition Date: (a) Holdings - \$2.9 million; (b) TWC - \$19.2 million; and Big Dog -  
18 \$500,000. As discussed below, TWC's Schedules include an \$8.8 million intercompany  
19 payable from TWC to Big Dog USA Inc., with an offsetting intercompany receivable by  
20 Big Dog USA Inc. Additionally, as discussed in greater detail below, TWC's Schedules  
21 reflect \$1.7 million owed under the Atchinson Note, which obligations were guaranteed  
22 by Holdings, and are therefore also reflected on Holdings' listing of General Unsecured  
23 Non-priority claim as a co-debtor claim. Thus, on a consolidated basis, the total General  
24 Unsecured Non-priority claims against three Debtors is \$12.1 million.

25 Of the \$12.1 million, \$4.1 million relates to trade inventory claims owed by TWC;  
26 \$3.3 million relates to landlord claims owed by TWC, Holdings and Big Dog; \$1.7  
27 million related to the Atchison Note, \$1.0 million relates to Employee Stock Option  
28

1 Notes, \$1.4 million relates to various vendor claims, and \$600,000 relates to workers'  
2 compensation and general liability claims asserted as owed by TWC and Big Dog.

3 ***The Atchinson Note.*** As part of the acquisition of the Natural Comfort shoe chain,  
4 TWC issued a \$1,700,000 three-year unsecured promissory note to the seller, Ken  
5 Atchinson. The principal portion of the Atchison Note is payable on January 15, 2011,  
6 subject to a subordination agreement in favor of WFRF. The Atchison Note bears an  
7 interest rate of 7.0% and accrued interest is payable quarterly. A settlement agreement  
8 has been entered into with respect to this claim, and a motion seeking approval of this  
9 settlement will shortly be filed with the Bankruptcy Court.

10 ***The Employee Stock Option Notes.*** On May 9, 2007, Holdings purchased from  
11 certain of its officers vested employee stock options held by them that would otherwise  
12 have expired on or before May 9, 2008. Options for a total of 245,000 shares were  
13 purchased from five officers (no options were purchased from the CEO), as follows:  
14 Roberta Morris, Anthony J. Wall, Douglas Nilsen, David Wolf, and John Otchis. The  
15 purchase price was \$16.00 per share, less the exercise price of the options, which ranged  
16 from \$6.50 to \$10.00 per share. The \$16.00 price represented a discount of approximately  
17 5% from the May 9, 2007 closing price of \$16.80. The net purchase price was  
18 \$1,965,000. Holdings paid for the options by delivery of Employee Stock Option Notes  
19 bearing interest at 7% per annum and payable in two equal installments on April 10, 2008  
20 and April 10, 2009.

21 Holdings has paid the first installment of principal due under the Employee Stock  
22 Option Notes. The final installment of principal was due April 10, 2009 (*e.g.*, the  
23 maturity date), but has not been paid. Holdings continued to pay interest at the rate of 7%  
24 per annum on the Employee Stock Option Notes past the Maturity, and as of the date of  
25 this Agreement has paid such interest through September 30, 2009. The total amount  
26 outstanding under the Employee Stock Option Notes as of the Petition Date was  
27 approximately \$995,312. A settlement agreement has been entered into with respect to  
28

1 this claim, and a motion seeking approval of this settlement will shortly be filed with the  
2 Bankruptcy Court.

3 ***Landlord Claims.*** As of the Petition Date, the Debtors' books and records  
4 reflected \$200,000 in landlord claims owed by Holdings, \$3.0 million in landlord claims  
5 owed by TWC and \$100,000 in landlord claims owed by Big Dog.

6 ***Trade Inventory Claims and Other Miscellaneous Unsecured Claims.*** A total of  
7 \$4.1 million in trade inventory claims are reflected on the books and records for TWC as  
8 of the Petition Date, in addition to \$1.4 million in various vendor claims owed by TWC  
9 and Big Dog, and approximately \$600,000 in general liability claims owed by TWC and  
10 Big Dog.

11 ***The Intercompany Claims.*** The intercompany balances shown on the Debtors'  
12 Schedules are reflected in the books and records of the Debtors as maintained in the  
13 ordinary course of their respective businesses. As to these items, although the Debtors  
14 generally maintained consolidated balance sheets pursuant to which intercompany  
15 balances were netted out for consolidated reporting purposes, to the extent stand-alone or  
16 consolidating (*i.e.*, individual) balance sheets were maintained, those balance sheets  
17 showed these amounts as assets or liabilities. Such intercompany amounts principally  
18 represent payments made by one entity on account of indebtedness as to which another  
19 entity was co-liable as a principal obligor or a guarantor. For example, TWC and Big Dog  
20 were (and are) liable under the Prepetition Credit Facility. Where cash derived from the  
21 operations of TWC or Big Dog was used to satisfy interest or principal obligations on  
22 account of that indebtedness, an intercompany debit was reflected on the books and  
23 records of the entity liable on such indebtedness, and an intercompany credit was reflected  
24 on the books and records of the entity funding such payment. No promissory notes or  
25 other documentation, other than the respective financial statements, exists with respect to  
26 these intercompany amounts. The Plan provides that Intercompany Claims will be  
27 Reinstated and maintained in the ordinary course of business; no cash payments will be  
28 made from one Debtor to another on account of the Intercompany Claims.



1                   **e. Reclamation Claims**

2                   Shortly after filing its Reorganization Cases, the Debtors received one reclamation  
3 demand totaling approximately \$264,000 from Aetrex Worldwide, Inc. on account of  
4 shipments of inventory to TWC that the vendor asserts were shipped within 45 days  
5 preceding the Petition Date. Bankruptcy Code section 546(c) honors the rights of a  
6 reclamation claimant under non-bankruptcy law, where, among other things, the goods  
7 were sold in the ordinary course of the seller's business, the debtor was insolvent, and the  
8 claimant made timely written demand for reclamation. Under the Bankruptcy Code,  
9 however, even an otherwise valid reclamation claim may be denied (*i.e.*, the claimant may  
10 be denied the right to reclaim the goods subject to the demand) if the court grants the  
11 claimant an administrative priority or secured claim, which presumably must be satisfied  
12 thereafter in accordance with the Bankruptcy Code's requirements. Following the  
13 Debtors' receipt of the Reclamation Claim, the Debtors advised the claimant that they  
14 would evaluate the Claim and advise the claimant regarding their determination. The Plan  
15 proposes that the Reclamation Demand, to the extent valid, will be paid in full.

16                   **3. Interests**

17                   **a. Common Stock**

18                   TWC and Big Dog are wholly owned subsidiaries of Holdings. Holdings is a  
19 holding company trading on the pink sheets under the symbol "WALK." Holdings is  
20 authorized to issue 30,000,000 shares of common stock. As of December 31, 2009, the  
21 Debtors had 9,540,949 of common stock issued and outstanding. The Prepetition Credit  
22 Facility and DIP Facility prohibit the payment of dividends.

23                   Fred Kayne, who is also the Chairman of the Board of Directors of Holdings,  
24 controls Holdings through his ownership of approximately 56% of Holdings' outstanding  
25 common stock. Fred Kayne's brother, Richard Kayne, owns approximately 9% of  
26 Holdings' outstanding stock, and Andrew D. Feshbach, the Chief Executive Officer of  
27 Holdings, owns approximately 7% of the outstanding stock. Other officers, including  
28 Anthony J. Wall, Roberta J. Morris, Michael Grenley, and Lee Cox, each own stock

1 constituting less than 1% of the outstanding shares. The Debtors are unaware of any  
2 individuals who own more than 5% of Holdings' outstanding common stock, except as set  
3 forth above.

4 **b. Preferred Stock**

5 Holdings is authorized to issue 3,000,000 shares of preferred stock. As of the  
6 Petition Date, Holdings did not have any preferred stock issued or outstanding. Under  
7 Holdings' Certificate of Incorporation, its Board of Directors is authorized to fix the terms  
8 of any preferred stock issued.

9 **c. Employee Stock Options**

10 The Debtors have adopted a performance award plan (the "Performance Award  
11 Plan") to attract, reward, and retain officers and employees. Options for 1,180,961 shares  
12 are issued and outstanding under the Performance Award Plan at exercise prices ranging  
13 from \$2.90 to \$10.00, and with expiration dates ranging from June 1, 2010 to June 29,  
14 2015.

15 **H. Current and Historical Financial Conditions**

16 The Debtors' primary income comes from TWC's sales of high-quality, technically  
17 designed comfort footwear and accessories for men and women and from Big Dog's sales  
18 of its branded collection of T-shirts, shorts, and other casual sportswear featuring graphic  
19 designs focused on the BIG DOGS® trademark and a dog character known as "Big Dog."  
20 The Debtors own no real property. The identity and value of the each of the Estates'  
21 assets are listed in detail on Exhibit A, and consolidated historical financial statements for  
22 the three years 2007, 2008, and 2009 are set forth at Exhibit B.

23 **I. Significant Events During the Bankruptcy**

24 The following is a chronological list of significant events which have occurred  
25 during these Reorganization Cases:

1           **1.     The Transition to Operations as Debtors in Possession and Other Early**  
2                   **Events in These Reorganization Cases**

3           During the first few weeks of these Reorganization Cases, management devoted  
4 significant time and resources to meeting with key vendors to assure them that the  
5 Debtors' operations would continue essentially uninterrupted during these Reorganization  
6 Cases. As a result of these efforts, within the first several weeks following the Petition  
7 Date the Debtors obtained cooperation from their key vendors. The Debtors have also  
8 been generating substantial information concerning their financial performance, which  
9 information has been provided to the Committee and its members. Additional information  
10 has been made public through pleadings filed periodically in the Reorganization Cases  
11 and through operating reports and interim statements submitted to the U.S. Trustee.

12           In addition, the Debtor obtained a "first-day" hearing on December 14, 2009 to  
13 consider various relief requested by the Debtors to facilitate their transition to Chapter 11.  
14 Among other things, the Debtors obtained Court orders: (a) establishing notice  
15 procedures; (b) extending the time for the Debtors to file their respective Schedules; (c)  
16 establishing the conditions under which the Debtors could continue receiving utility  
17 services; (d) directing the joint administration of these Reorganization Cases; (e)  
18 authorizing the Debtors to honor certain employee benefits and wages in the ordinary  
19 course of business; (f) authorizing the Debtors to pay certain prepetition sales and use  
20 taxes in the ordinary course of business; (g) permitting the Debtors to honor gift cards and  
21 other customer obligations; and (h) allowing the Debtors to maintain their cash  
22 management system.

23           **2.     The Debtor-in-Possession Financing**

24           Shortly before the Debtors filed these Reorganization Cases, they negotiated the  
25 terms of the DIP Facility with WFRF. In broad outline, the DIP Facility provided for  
26 TWC and Big Dog to obtain from WFRF cash advances and other extensions of credit in  
27 an aggregate principal amount of up to \$30 million on a revolving credit basis, subject to a  
28 budget filed with the Court. Holdings guaranteed the obligations under the DIP Facility.

1 In broad outline, the DIP Facility provided for: (a) WFRF to make advances to TWC and  
2 Big Dog based upon eligible inventory and receivables as calculated under the Prepetition  
3 Loan Agreement; (b) the Debtors to remit all cash generated from prepetition collateral  
4 (*i.e.*, receivables on hand as of the Petition Date) to WFRF for application against, and  
5 partial satisfaction of, WFRF's prepetition Claims under the Prepetition Loan Agreement;  
6 (c) the Debtors' authority to expend funds for the purposes set forth in the financing  
7 budget, subject to a negotiated variance; (d) the Debtors to pay interest to WFRF in the  
8 amount of LIBOR plus 3.5% under the revolving facility; and (e) a stated maturity of  
9 April 15, 2010. The Debtors' obligations under the DIP Facility were to be secured by  
10 valid and perfected first priority priming liens on and security interests in substantially all  
11 assets owned by Debtors, except avoidance actions under the Bankruptcy Code and  
12 subject to a professional-fee carveout.

13         Shortly after filing their chapter 11 petition, on December 16, 2009, the Debtors  
14 obtained interim approval of the DIP Facility. Thereafter, the Committee, the Debtors,  
15 and WFRF engaged in negotiations regarding final approval of the financing. These  
16 discussions focused predominantly on: (a) the adequacy of the financing provided by  
17 WFRF; and (b) the Committee's interest in creating a two-track process that would permit  
18 the Debtors to move forward with this Plan while simultaneously conducting a "market  
19 test" to determine whether a sale process would be likely to generate greater recoveries to  
20 creditors than the Debtors' proposed Plan. These issues were all addressed and resolved  
21 consensually among the parties. Among other things, WFRF agreed to make certain  
22 modifications to the postpetition financing that provided the Debtors with approximately  
23 \$2.45 million in additional liquidity, and certain deadlines under the DIP Facility were  
24 extended in order to accommodate a "two track" reorganization and due diligence process.  
25 Subsequently, the DIP Financing agreement was approved on a final basis on January 14,  
26 2010. Pursuant to the "roll up" under the DIP Facility, the prepetition indebtedness owing  
27 to WFRF has been fully paid off, and the outstanding balance on the DIP Facility as of  
28 December 31, 2009 was approximately \$7.1 million. This outstanding balance could

1 fluctuate with borrowings and pay downs between now and the Effective Date. The  
 2 Debtors anticipate that as of April 15, 2010, the outstanding balance on the DIP Facility  
 3 should total about \$15 million.

4 **3. Appointment of the Committee.**

5 Shortly after the Debtors commenced their Reorganization Cases, the U.S. Trustee  
 6 appointed an Official Committees of Unsecured Creditors in these Reorganization Cases.  
 7 The Committee members are: Deckers Outdoor Corp.; Ken Atchinson; Simon Property  
 8 Group; General Growth Properties, Inc.; Dansko, LLC; Ecco USA Inc.; UPS; Aetrex  
 9 Worldwide Inc.; and MBT-Masai USA Corp. From time-to-time, the Debtors  
 10 management and professionals have provided information to, and interacted with, both the  
 11 Committee and its member. In addition to monitoring the Reorganization Cases, the  
 12 Committee from time to time has requested documentation regarding, among other things,  
 13 the Debtors' operations, its financing needs, its progress towards formulating a plan, and  
 14 the status of the due diligence being conducted by various interested parties.

15 **4. Professionals Retained by the Estates and Professional Fee Budgets.**

16 The Debtors have retained four professionals to assist with the administration of  
 17 their estates, and they anticipate retaining three more. In addition, the Committee has an  
 18 additional two professionals. These professionals are listed in the following table.

Professional	Representation	Date Order Entered Authorizing Employment
<i><u>Estate Professionals</u></i>		
Arent Fox LLP	Reorganization Counsel	<del>Order</del> Pending <a href="#">2/10/2010</a>
Kurtzman Carson Consultants	Claims Agent	1/26/2010
Clear Thinking Group	Financial Advisors	1/11/2010
Tiger Capital Group		1/29/2010
Singerlewak	Accountant	<del>Application</del> <a href="#">Order</a>

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Pending

Holthouse Carlin & Van Trigt Accountant Application Pending

Koenig and Associates Special IP Counsel ~~Application Pending~~ [3/16/2010](#)

**Committee Professionals**

Pachulski Stang ~~Ziehl~~ & Jones Committee Counsel 1/21/2010

Deleted: Ziehl

BDO Seidman, LLP FinancialAdvisor 1/21/2010

As discussed in Section II.G.2.a., above, early in the Reorganization Cases, the Debtors entered into a DIP Facility, which included a budget for estimated professional fees and expenses payable on an interim basis. (See Section III.C.1 summarizing payments made and estimating anticipated Professional-Fee Claims through the Effective Date.)

**5. The Bar Date and Claim Objections**

On January 15, ~~2010~~[2010](#), the Debtors filed a *Motion for Entry of an Order (A) Establishing Bar Date for Filing (I) Proofs of Claim or Interest and (II) Requests for Allowance of Section 503(B)(9) Administrative Expense; (B) Approving Form and Manner of Notice of Bar Date. ~~By this Motion, the Debtors proposed that the Court establish March 3,~~ On February 10, 2010, the Court Entered its Order Granting Motion of Debtors for Entry of an Order (A) Establishing Bar Date for Filing (I) Proofs of Claim or Interests and (II) Requests for Allowance of Section 503(b)(9) Administrative Expense; (B) Approving Form and Manner of Notice of Bar Dates; and (C) Granting Related Relief. Subject to certain exceptions, this order established April 20, 2010 as the general bar date for filing any proofs of claim or interest against the Debtors. ~~Approximately 73 proofs of claim or interest have been filed in case no. 09-15138. Approximately 8 proofs of claim have been filed in case no. 09-15137. Approximately 6 proofs of claim have~~*

1 ~~been filed in case no. 09-15139. Accordingly the total proofs of claim filed in these~~  
2 ~~Reorganization Cases to date is approximately 87, and this number is likely to increase~~  
3 ~~once the bar date notice is served on Estates. On February 19, 2010, the Debtors served~~  
4 ~~notice of this bar date upon~~ all creditors and parties in interest. ~~Promptly following the~~  
5 ~~bar date and prior to the hearing to approve the adequacy of this Disclosure Statement, the~~  
6 ~~Debtors and their claims agent will file an update to this section of the Disclosure~~  
7 ~~Statement identifying the following rough categories of Claims that may be asserted~~  
8 ~~against each Debtor: Secured Claims, Priority Claims, and Unsecured Claims. The~~  
9 ~~Debtors will include with this update a preliminary analysis setting forth the extent to~~  
10 ~~which they believe that Claims may be reduced as objections to claims are identified and~~  
11 ~~either resolved or prosecuted and the extent to which the claim reconciliation and~~  
12 ~~objection process may impact distributions under the Plan, and on February 26, 2010 and~~  
13 ~~March 8, 2010 the Debtors caused a notice to be published in the Los Angeles Daily~~  
14 ~~Journal and Footwear News respectively.~~

15 As of March 10, 2010 claimants have filed approximately 245 proofs of claim in  
16 which they assert Claims exceeding \$5,000,055.00. Based on its preliminary review of  
17 the Claims and their books and records, the Debtors do not anticipate that the Allowed  
18 Claims will differ significantly from the Claims that the Debtors have set forth on their  
19 Schedules. However, the Bar Date has not yet occurred and it is possible that the actual  
20 amount of Allowed Claims could differ materially from this estimate; the amount of the  
21 Allowed Claims in these cases can be determined only after the resolution of all Disputed  
22 Claims.

23 The Debtors are reviewing all proofs of claim and proofs of interest to determine  
24 whether any objections are appropriate. If so, objections will be filed in accordance with  
25 the Plan. These objections may be filed either before or after the Plan's Effective Date.  
26 **The Debtors, the Estates, and the Committee therefore reserve all rights with respect**  
27 **to the allowance or disallowance of any and all Claims and Interests, including**  
28 **Claims and Interests that have not yet been asserted. In voting on the Plan, creditors**

1 may not rely on the absence of an objection to their proofs of claim as an indication  
2 that the Debtors, the Committee, or any other party in interest ultimately will not  
3 object to the amount, priority, security, or allowability of their Claims.

4 **6. The Debtors' Positive Postpetition Performance**

5 Leading up to the filing, the Debtors were concerned about their liquidity  
6 following the 2009 holiday period. Faced with tightening vendor credit, tightening bank  
7 covenants, and the obligation to repay deferred rent payments commencing in December  
8 2009, it did not appear the Debtors would have the financial ability to operate effectively  
9 in the first half of 2010 without resort to the bankruptcy process. The Debtors selected a  
10 December filing date because they believed this would be the least disruptive to business  
11 operations (and subsequent recoveries to creditors) since at that time the Debtors would be  
12 well-stocked with inventory for the holiday season. Any interruption of inventory  
13 purchases following a bankruptcy filing was expected to be less disruptive during this  
14 period, as it would primarily impact sales in January and February—a much lower sales  
15 time frame than the December holiday period. Further, it would be relatively easy to  
16 close stores during this time frame and the ensuing weeks.

17 This strategy proved effective. Subsequent to the Petition Date, the Debtors  
18 incurred a strong December selling period that resulted in comparative store sales of  
19 approximately 6% for the postpetition period and 2.9% for the fourth quarter. Postpetition  
20 pre-tax income is approximately \$2.1 million, which is the result of higher sales as well as  
21 cost cutting measures that the Debtors are continuing to roll out. While initial inventory  
22 shipments from vendors were slow following the filing, as had been anticipated, all  
23 critical vendors are now shipping and on-track with improving credit terms. Specifically,  
24 the Debtors were particularly successful in managing down their year-over-year  
25 inventories, resulting in lower debt and lower levels of discounted merchandise going  
26 forward. As noted above, the Debtors have also paid down their Prepetition Credit  
27 Facility and DIP Facility by over \$18 million for the period, ending the year with only  
28 \$7.1 million outstanding on their DIP Facility. And as discussed in greater detail below,



1 the Debtors now appear better situated to achieve profitability given their new rent  
2 structures s and further reductions in overhead and field operating costs.

3 **7. Restructuring Efforts and the Plan Process.**

4 **a. The Debtors' Successful Renegotiation of Its Real Estate Lease**  
5 **Portfolio**

6 On the Petition Date, the Debtors were parties to approximately 215 unexpired  
7 leases of non-residential real property. The Debtors' corporate headquarters are located at  
8 an approximately 24,000 square foot leased office building in Santa Barbara, California,  
9 pursuant to a non-residential real estate lease entered into by Holdings. Additionally, the  
10 Debtors lease an office for the TWC merchandising group comprising approximately  
11 17,000 square feet in Westlake, California. Lastly, Holdings leases a 230,000 square foot  
12 distribution center in Lincolnton, North Carolina. The total monthly rent under these  
13 leases is approximately \$116,341. The Debtors are currently using the facilities in the  
14 ordinary course of their business operations. As required under the Bankruptcy Code, the  
15 Debtors have timely satisfied all of their postpetition rent and other obligations under  
16 these real estate leases. The Debtors are unaware of any unpaid, prepetition obligations in  
17 connection with the real-estate leases.

18 In addition, as of the Petition Date, TWC was a party to approximately 207  
19 unexpired leases of non-residential real property relating to TWC stores doing business in  
20 38 states across the country. As of the Petition Date, the total monthly rent under these  
21 leases was approximately \$2.8 million. In addition, Big Dog was a party to eight  
22 unexpired leases of non-residential real property relating to Big Dog stores doing business  
23 in California and Florida. The total monthly rent under these leases is approximately  
24 \$100,000. As required under the Bankruptcy Code, the Debtors have timely satisfied all  
25 of their postpetition rent and other obligations under these real estate leases.

26 To further their "right-sizing" plan, shortly after commencing these Reorganization  
27 Cases, the Debtors filed a motion seeking authority to close approximately 130 stores, all  
28 of which were at above-market rents, and establishing streamlined procedures to handle

1 the rejection of their non-residential, real property leases. The Court approved this motion  
2 in December 2009, and in January 2010 the Debtors filed a motion seeking authority to  
3 close approximately 40 additional stores. In the meantime, however, in response to  
4 landlords' expressed desire not to have stores closed, the Debtors also reached out to their  
5 landlords to explore the possibility of renegotiating existing leases at market rents. The  
6 Committee conducted its own lease analysis, and while there were some differences in the  
7 methodology used by the Debtors and the Committee, conceptually the Committee and  
8 the Debtors agreed that the Estates would be benefited if additional stores could be kept  
9 open at more favorable rents.

10 Subsequently, the Debtors have been engaged in extensive negotiations regarding  
11 their portfolio of unexpired, non-residential real estate leases. They have now  
12 successfully entered into agreements that provide for the modification of many of their  
13 leases, subject to Bankruptcy Court approval of these lease modification agreements. The  
14 lease modifications affect approximately 100 of the Debtors' 210 total leases. The terms  
15 of the agreements vary, but a significant number have similar provisions. By way of  
16 summary, a significant number of the lease modifications provide for a reduction of the  
17 Debtors' rent for a period of, typically, about 2 years. After that time, the Debtors (and in  
18 some instances the landlords) have the right to terminate many of the modified leases. If  
19 the modified leases are not terminated, then the rent will reset, on a prospective basis only,  
20 to the rental rates otherwise provided for in the original, unmodified leases.

21 These modifications provide the Debtors with significant protection. First, the  
22 Debtors obtain immediate rent relief which will reduce their aggregate monthly store rent  
23 from approximately \$2.8 million to \$2.4 million. As a result of the restructuring and cost  
24 reduction initiatives, the company expects to generate annual cost savings of  
25 approximately \$3 million. The savings will begin currently, with substantially all of the  
26 benefit of these cost initiatives expected to be realized by the end of 2010.

27 Second, if the economy improves over the next 18 months, then even at the higher  
28 rent rates, the Debtors will be well positioned to continue their business operations with

1 substantially all of their current stores in place. If the economy does not improve and the  
2 Debtors cannot operate profitably under higher rents after this period of adjusted rent, the  
3 leases can simply be terminated and the Debtors' operations can be downsized in an  
4 orderly fashion without exposing the Debtors to claims for early termination or rejection  
5 damages. Based on the significant success that the Debtors have achieved in their lease  
6 negotiations, TWC has modified its reorganization plan to provide for the closing of only  
7 one TWC store. The balance of the stores originally slated for closure now remain open  
8 pursuant to lease modification agreements, pending Bankruptcy Court approval. The  
9 Debtors' Plan therefore contemplates that substantially all of its stores will be retained on  
10 the Effective Date, and substantially all its executory contracts and unexpired leases will  
11 be assumed, subject to the negotiated lease modifications.

12 As required under the Bankruptcy Code, the Debtors have timely satisfied all of  
13 their postpetition rent and other obligations under these real estate leases. The Debtors'  
14 books and records indicate that the unpaid, prepetition obligations owed in connection  
15 with these real estate leases are approximately \$3.3 million. However, pursuant to the  
16 lease modification agreements, the Debtors have reduced their "cure" obligations with  
17 respect to this lease portfolio to \$3.2 million in the aggregate, and substantially all other  
18 general unsecured claims against the Debtors will be waived upon the Debtors'  
19 assumption of the modified leases.

20 Substantially contemporaneously with the filing of this Disclosure Statement, the  
21 Debtors are preparing to file a motion seeking approval of the negotiated lease  
22 modifications. Promptly following the Court's entry of an order on such motion, which  
23 the Debtors anticipate will occur prior to the hearing on this Disclosure Statement, the  
24 Debtors will file an amendment to this Disclosure Statement reflecting the Court's ruling.  
25 If modifications to the Schedules of Assumed and Rejected Agreements are required  
26 during the course of these Reorganization Cases, the amended Schedules of Assumed and  
27 Rejected Agreements will be filed and served on or before the Exhibit Filing Date.  
28

1                   **b. Other Unexpired Leases and Executory Contracts**

2           The Debtors' business involves hundreds of creditors nationwide with numerous  
3 contracts, leases, and other agreements. Throughout these Reorganization Cases, the  
4 Debtors have been analyzing their agreements to determine whether it would be beneficial  
5 to accept or reject them on the Effective Date. The Debtors are currently using  
6 substantially all of these agreements in the ordinary course of their business, and rejection  
7 of the vast majority of these agreements before Plan confirmation could therefore be  
8 extremely disruptive to its operations. Inasmuch as the Plan contemplates that  
9 substantially all of the Debtors stores will remain open pursuant to the modified lease  
10 portfolio, resulting in 100% distributions to most Classes of creditors, the Plan  
11 contemplates that substantially all of the Debtors' executory contracts and unexpired, non-  
12 real estate leases will be assumed on the Effective Date.

13           As noted above, the Debtors are preparing to file a motion seeking approval of the  
14 negotiated lease modifications with respect to their portfolio of real estate leases, they will  
15 file an amendment to this Disclosure Statement reflecting the Court's ruling on this  
16 motion. Inasmuch as the assumption of many of the Debtors' other agreements is  
17 premised on the Court's approval of the modifications to the Debtors' lease portfolio,  
18 which will enable virtually all of the Debtors' stores to remain open, if modifications to  
19 the Schedules of Assumed and Rejected Agreements are required during the course of  
20 these Reorganization Cases, such amended Schedules of Assumed and Rejected  
21 Agreements will be filed and served on or before the Exhibit Filing Date.

22                   **c. The Debtors' Plan and Investor Support.**

23           Prior to the filing, the Debtors apprised Richard Kayne that it may be in the best  
24 interests of the Debtors and all interested parties for the company to be reorganized and  
25 that additional capital would be required to support the reorganization effort and to  
26 capitalize the Reorganized Debtors going forward. After some negotiations, Mr. Kayne  
27 provided a letter of intent to provide the necessary capital. Shortly thereafter, the Debtors  
28 filed their chapter 11 petitions. At that time, it was anticipated that the Debtors would be

1 able to quickly propose a confirmable chapter 11 plan, although as a result of significant  
2 anticipated rejection damage claims resulting from planned store closings, it appeared that  
3 unsecured creditors would receive only a *pro rata* recovery on their claims and that all  
4 existing equity interests in the Debtors would be cancelled.

5 As a result of the Debtors' significant success in their negotiations with landlords,  
6 it became apparent that the Debtors would close fewer stores than had first been planned  
7 and that significantly fewer rejection damage claims would result. Further, the rent  
8 concessions that were being obtained and the Debtors' improving operating results  
9 indicated that the recoveries to creditors potentially could be significantly improved over  
10 what had originally been expected and that perhaps the equity interests of stockholders  
11 could be preserved, allowing the Debtors a possibility of preserving approximately \$17  
12 million in tax loss carryforwards for the benefit of the Debtors' Estates. This change in  
13 the Debtors' reorganization strategy was met with initial resistance from Mr. Kayne's  
14 advisors and counsel, but eventually Mr. Kayne and the Investors agreed to fund the  
15 current Plan, which provides a full recovery to all creditors other than the Noteholders,  
16 and which preserves Holdings' Existing Common Stock subject to possible impairment  
17 pursuant to the terms of the Investor Commitment Letter. Mr. Kayne may privately solicit  
18 certain other persons, possibly including certain stockholders of the Company (each who  
19 qualifies as an accredited investor within the meaning of Regulation D under the  
20 Securities Act), to participate in this investment.

21 The Debtors further negotiated with Mr. Kayne regarding the Investors' Capital  
22 Investment and its effects on existing stockholders. After negotiations, Mr. Kayne agreed  
23 to allow the Reorganized Debtors to make a rights offering to existing stockholders to pay  
24 off the Capital Investment following the Effective Date. The Reorganized Debtors  
25 contemplate making such as rights offering to existing stockholders late in 2010 or early  
26 in 2011, subject to compliance with applicable federal and state securities laws, but  
27 reserve the right to pursue other financing alternatives to repay the Capital  
28 Investment in a manner that takes into account the interests of all existing

1 shareholders. The Debtors are supportive of this rights offering, as seeking to avoid a  
2 change in ownership may preserve approximately \$17 million tax loss carry forwards that  
3 could benefit the Debtors and all of their stakeholders going forward.

4 In consideration of the capital support, financial advice, and concessions from the  
5 Investors, the Debtors have agreed to their request for an advisory fee to be paid to in  
6 connection with the Capital Investment. The advisory fee, in the amount of \$2.5 million,  
7 will be payable in cash to the Investors upon the earliest to occur of (a) the closing of the  
8 rights offering required under the Investor Commitment Letter (or other permitted payoff  
9 of the Capital Investment), (b) a liquidation, dissolution, or winding up of the Debtors as  
10 contemplated under the “Liquidation Preference” in the Commitment Letter, or (c)  
11 January 31, 2011. Furthermore, under the terms of the Exit Financing to be provided by  
12 WFRF, the payment of such an advisory fee will be subject to a subordination agreement  
13 in favor of WFRF as well as maintenance of a minimum specified level of availability  
14 both for a period before and after giving effect to the payment, under the Exit Facility.  
15 The Debtors believe that this fee request is fair and reasonable given the extent to which  
16 the Investors’ capital support and financial advice will be used to enable a highly  
17 successful reorganization of the Debtors, which will emerge as a profitable enterprise  
18 going forward having paid all of their prepetition debts—other than those obligations  
19 being voluntarily impaired by the Noteholders and the holders of the Employee Stock  
20 Option Notes—and having preserved Holdings’ equity value for all of its stockholders.

21 **d. Marketing Testing of the New Value Plan and a Possible Sale**  
22 **Process**

23 As noted above, at the time that the Debtors commenced these Reorganization  
24 Cases, it was anticipated that rejection damage claims resulting from planned store  
25 closings would result in only a *pro rata* recovery to unsecured creditors. Moreover, in the  
26 first week following the Petition date two parties materialized expressing an interest in  
27 acquiring some of the Debtors’ assets on a going concern basis. Accordingly, the Debtors  
28 and the Committee agreed that a process would be commenced to subject the Debtors’

1 contemplated new value plan to a market test to ascertain whether the Capital Investment  
2 represented fair value for the equity interests in the Reorganized Debtors and to help the  
3 Debtors and the Committee to evaluate whether greater recoveries might be generated by  
4 a sale of the Debtors' business pursuant to Bankruptcy Code Section 363.

5 To that end, significant marketing activity has occurred since the Petition Date.  
6 The Debtors, with the assistance of their financial advisor, opened a "virtual data room"  
7 during the fourth week of December, approximately two weeks after the Petition Date,  
8 and began populating that data room with significant financial data regarding the Debtors  
9 based on a due diligence list provided by the Committee's financial advisor. The Debtors  
10 have continued to add data to the virtual due diligence room, on a rolling basis, during the  
11 course of this Reorganization Case and, from time to time, to add additional documents in  
12 response to requests from interested parties. The Debtors drafted a form of confidentiality  
13 agreement and provided it to Committee counsel for comment during the first week of  
14 January 2010. The Debtors then began circulating the confidentiality agreement to all  
15 interested parties, and these parties were all granted access to the virtual data room  
16 promptly following their execution of the confidentiality agreement. The confidentiality  
17 agreement was received on or about January 7, 2010.

18 Meanwhile, the Committee and its financial advisors reached out to at least a dozen  
19 parties who they believed might be interested in pursuing a transaction, and the Debtors  
20 also reached out to one interested party about a possible transaction. To date, 11  
21 interested parties requested additional information and were provided with a  
22 confidentiality agreement. Of these parties, one indicated, through counsel, that it would  
23 only return an executed confidentiality agreement and participate in due diligence if it  
24 could withhold its identity from the Debtors, the Committee, WFRF, this Court, and all  
25 other parties in interest. The Debtors declined to go forward on this basis. Another seven  
26 parties returned an executed confidentiality agreement and have been provided with  
27 access to the virtual data room. Two of these parties have indicated that they are not  
28 interested in going forward with a sale process, or that they are only interested in going

1 forward if they believe they can purchase the Debtors' assets at a significant discount  
2 relative to the Debtors' debt structure. None of the remaining five parties have provided  
3 the Debtors' with a letter of intent or otherwise indicated the terms on which they might  
4 be interested in moving forward with a transaction, if at all, or what the structure of such a  
5 transaction might be.

6 **8. Other Legal Proceedings**

7 Currently, there are no pending adversary proceedings in these Reorganization  
8 Cases, and no pending motions other than those noted above. The Debtors are currently  
9 involved in the following nonbankruptcy legal proceedings, all of which have been  
10 automatically stayed. The Debtors are not the plaintiffs in any pending state-court  
11 litigation that should be pursued for the benefit of the Estates.

12 **a. Actions against Holdings**

13 **Mayorga v. Feshbach (Dog Bite /Indemnification Claim):** A complaint entitled  
14 *Jade Mayorga v. Andrew Feshbach, Juicy Couture, Liz Claiborne, Inc.*, was filed on  
15 September 15, 2009 in the Superior Court of California, Santa Barbara County. The  
16 complaint alleges, *inter alia*, that Holding's CEO, Andrew Feshbach, negligently failed to  
17 prevent an injury to **defendant** plaintiff in a retail store by a dog owned by Mr. Feshbach.  
18 Plaintiff claims unspecified damages for physical and psychological injuries. The accident  
19 occurred in the course of business being conducted by Mr. Feshbach on behalf of  
20 Holdings, and accordingly Holdings has agreed to defend and indemnify him. The claim  
21 has been turned over to Debtors' insurance carrier.

22 **Margaritaville Enterprises (IP Litigation):** Margaritaville Enterprises, LLC has  
23 filed Opposition No. 91186184 against App. Ser. No. 78979408 in classes 16, 24, and 25  
24 for the mark IT'S FIVE O'CLOCK SOMEWHERE! owned by The Walking Company  
25 Holdings, Inc. Margaritaville Enterprises, LLC has filed Opposition No. 91186185 against  
26 App. Ser. No. 78453043 in Class 043 for the mark IT'S FIVE O'CLOCK SOMEWHERE!  
27 owned by The Walking Company Holdings, Inc. Both proceedings are currently pending  
28 in the Trademark Trial and Appeal Board of the United States Patent and Trademark



1 Office and the two proceedings have been consolidated into one proceeding with Opp.  
2 No. 91186184 being labeled as the “Parent”.

3 **Obersheimer v. Holdings (Contractor Dispute):** A complaint entitled *Clayton B.*  
4 *Obersheimer v The Walking Company Holdings, Inc d/b/a The Walking Company* was  
5 filed on October 15, 2009 in Supreme Court of the State of New York, County of Eire.  
6 The complaint alleges, *inter alia*, that the plaintiff subcontractor provided goods and  
7 services to a general contractor hired by TWC to build out one of its stores, that the  
8 contractors has not paid plaintiff and that TWC is responsible for payment. Plaintiff  
9 claims damages in the amount of \$19,100 plus interest and attorney’s fees.

10 **b. Actions against TWC**

11 **Andrews & Park v. TWC (Employee Claims):** A complaint entitled *Erin Andrews*  
12 *and Keith Park, on behalf of themselves and all others similarly situated, vs. The Walking*  
13 *Company* was filed in Los Angeles Superior Court on December 31, 2008. The  
14 complaint, as amended, seeks to certify a class of all non-exempt employees employed by  
15 TWC in California. The complaint alleges that TWC incorrectly calculated overtime pay  
16 for commissioned employees in violation of the California Labor Code and as a result  
17 such employees are entitled to wages, interest and penalties. Without admitting liability,  
18 the parties entered into a settlement agreement as of July 17, 2009 under which TWC  
19 agreed, subject to final court approval of the settlement, to pay \$225,000 in 2010 to the  
20 class to settle the action. As of the Petition Date, the hearing for final approval of the  
21 settlement has not occurred. This claim has been settled by way of a further settlement  
22 agreement negotiated between the parties following the Petition Date, and which will  
23 shortly be presented to the Bankruptcy Court for approval.

24 **Rosa Maentas v. TWC (Slip and Fall):** A complaint entitled *Rosa Amentas v The*  
25 *Walking Company* was filed on July 17, 2009 in the Superior Court of New Jersey, Law  
26 Division, Morris County. The complaint alleges, *inter alia*, that negligence by TWC  
27 resulted in a slip and fall injury to plaintiff in one of TWC’s stores. Plaintiff claims  
28 unspecified damages for medical expense, pain, physical impairment, interest and cost of

1 suit. The claim has been turned over to Debtors' insurance carrier. Because the defense  
2 of this adversary proceeding is being handled by Debtors' insurance carrier and because  
3 any judgment would be paid by the carrier, the Debtors do not anticipate that this cause of  
4 action will have an effect on the plan.

5 **Bobbi Gordon v. TWC (Slip and Fall):** A complaint entitled *Bobbi Gordon v The*  
6 *Walking Company* was filed on October 8, 2009 in District Court of New Jersey, Law  
7 Division, Collin County. The complaint alleges, *inter alia*, that negligence by TWC  
8 resulted in a slip and fall injury to plaintiff in one of TWC's stores. Plaintiff claims  
9 unspecified damages for medical expenses, pain and suffering and loss of earnings. The  
10 claim has been turned over to Debtors' insurance carrier.

11 **Scottsdale Fashion Square v. TWC (LeaseDispute):** A Complaint entitled  
12 *Scottsdale Fashion Square LLC v. The Walking Company* was filed as of October 17,  
13 2009 in the Superior Court of Arizona, Maricopa County. The Complaint alleges breach  
14 of contract by TWC under a retail store lease between TWC and the plaintiff. The  
15 Debtors settled this claim by way of a lease amendment, and the Debtors will seek  
16 approval of that lease amendment from the Bankruptcy Court.

17 **Bayrock Investment v. TWC (Lease Dispute):** A Complaint entitled *Bayrock*  
18 *Investment Co. v. The Walking Company* was filed as of November 17, 2009 in the Circuit  
19 Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, Civil Division.  
20 The Complaint alleges breach of contract by TWC under a retail store lease between TWC  
21 and the plaintiff. The Debtors settled this claim by way of a lease amendment, and the  
22 Debtors will seek approval of that settlement from the Bankruptcy Court.

23 **Pearland Town Center v. TWC (Lease Dispute):** A Complaint entitled *Pearland*  
24 *Town Center Limited Partnership v. The Walking Company* was filed as of November 19,  
25 2009 in the District Court, 412<sup>th</sup> Judicial District of Brazoria County, Texas. The  
26 Complaint alleges breach of contract by TWC under a retail store lease between TWC and  
27 the plaintiff. The Debtors settled this claim by way of a lease amendment, and the  
28 Debtors will seek approval of that settlement from the Bankruptcy Court.

1           **Trumbell Shopping Center v. TWC (Lease Dispute):** A Complaint entitled  
2 *Trumbell Shopping Center #2, LLC v The Walking Company* was filed as of December 7,  
3 2009 in the Superior Court J.D. of Fairfield at Bridgeport Housing Session. The  
4 Complaint alleges breach of contract by TWC under a retail store lease between TWC and  
5 the plaintiff. The Debtors settled this claim by way of a lease amendment, and the  
6 Debtors will seek approval of that lease amendment from the Bankruptcy Court.

7           **Arlington Highlands v. TWC (Lease Dispute):** A Complaint entitled *Arlington*  
8 *Highlands LTD. v. The Walking Company* was filed as of December 2, 2009 in the  
9 County Court at Law No. 3, Tarrant County, TX. The Complaint alleges breach of  
10 contract by TWC under a retail store lease between TWC and the plaintiff. The Debtors  
11 settled this claim by way of a lease reinstatement, and the Debtors will seek approval of  
12 that lease reinstatement from the Bankruptcy Court.

13           **In Line Construction Group v. TWC (Contractor Dispute):** A Complaint entitled  
14 *In Line Construction Group, Inc. v. CCS, LLC d/b/a Columbia Construction Services,*  
15 *LLC and The Walking Company* was filed on December 26, 2008, in the Circuit Court of  
16 Cook County, Illinois. The complaint alleges that the plaintiff subcontractor provided  
17 goods and services to a general contractor hired by TWC to build out one of its stores, that  
18 the contractor has not paid plaintiff and that TWC is responsible for payment. A default  
19 order was obtained by plaintiff against TWC (and also the general contractor). Before  
20 prove-up was made and a default judgment entered, settlement conversations between  
21 TWC and plaintiff commenced but no settlement was finalized.

22           **Laurie Costa (Employment Matter):** [A notice of a filing of a discrimination](#)  
23 [complaint dated January 26, 2010 was given to TWC by the Californian Department of](#)  
24 [Fair Employment & Housing \(the "DFEH"\) regarding a claim made by Laurie Costa, a](#)  
25 [former TWC employee. Ms. Costa claims discrimination on the basis of mental disability](#)  
26 [in connection with TWC's termination of her employment. The matter is under](#)  
27 [investigation by the DFEH.](#)  
28

1           c.     **Actions against Big Dog**

2           **Harris v Big Dog (Slip and Fall):** A complaint entitled *Judy Harris v. The*  
3 *Walking Company, Inc. f/k/a Big Dog Holdings, Inc.* was filed on November 12, 2008 in  
4 Circuit Court, Hamilton County, Tennessee. The complaint alleges, *inter alia*, that  
5 negligence by defendant resulted in a slip and fall injury to plaintiff in one of Big Dog’s  
6 stores, and plaintiff claims unspecified damages for medical expenses, pain and suffering  
7 and emotional distress. The claim has been turned over to Debtors’ insurance carrier.

8           **Atlantic City v. Big Dog (Lease Dispute):** A complaint entitled *Atlantic City*  
9 *Associates Number Two (S-1), LLC v. Big Dog USA, Inc.* was filed November 20, 2008 in  
10 Superior Court of New Jersey, Atlantic County. The complaint alleges, *inter alia*, breach  
11 of contract by Big Dog under a retail store lease between Big Dog and the plaintiff.  
12 Plaintiff claim \$50,996 in damages plus fees and interest. A judgment was entered for an  
13 award against Big Dog of \$121, 470.54. A settlement agreement has been entered into  
14 with respect to this claim, and a motion seeking approval of this settlement will shortly be  
15 filed with the Bankruptcy Court.

16           **Buckner v. Big Dog (Slip and Fall):** A complaint entitled “Karen Buckner v. Big  
17 Dog USA, Inc.” was filed April 28, 2009 in District Court, Galveston County, Texas. The  
18 complaint alleges, *inter alia*, that negligence by Big Dog resulted in a slip and fall injury  
19 to plaintiff in one of Big Dog’s stores, and plaintiff claims unspecified damages for  
20 medical expenses, pain and suffering and mental anguish. The claim has been turned over  
21 to Debtors’ insurance carrier.

22           ~~**Laurie Costa (Employment Matter):** A notice of a filing of a discrimination~~  
23 ~~complaint dated January 26, 2010 was given to TWC by the Californian Department of~~  
24 ~~Fair Employment & Housing (the “DFEH”) regarding a claim made by Laurie Costa, a~~  
25 ~~former TWC employee. Ms. Costa claims discrimination on the basis of mental disability~~  
26 ~~in connection with TWC’s termination of her employment. The matter is under~~  
27 ~~investigation by the DFEH.~~

1           **9. Actual and Projected Recovery of Preferential or Fraudulent Transfers**

2           The Plan vests in the Reorganized Debtors any so-called avoidance actions,  
3 including the right to assert claims under Bankruptcy Code Section 547, *i.e.*, the  
4 preference section. Section 547(b) authorizes the debtor in possession to avoid (*i.e.*, set  
5 aside) a transfer of property of the debtor that: (a) was made to or for the benefit of a  
6 creditor, for or on account of an antecedent debt owed by the debtor before the transfer  
7 was made; (b) was made while the debtor was insolvent and on or before 90 days before  
8 the date of the bankruptcy filing (between 90 days and one year before the date of the  
9 petition, if such creditor at the time of such transfer was an insider); and (c) that enabled  
10 the creditor to receive more than the creditor would receive if the case were a liquidation  
11 case under Chapter 7 of the Bankruptcy Code, the transfer had not been made, and the  
12 creditor received payment of the debt to the extent provided by the provisions of the  
13 Bankruptcy Code. Bankruptcy Code Section 547(c) provides certain defenses to actions  
14 under Section 547(b), including a defense if the debt was incurred in the ordinary course  
15 of business or financial affairs of the debtor and the creditor and if the transfer was made  
16 in the ordinary course of business and according to ordinary business terms.

17           The Debtors Statement of Financial Affairs identifies approximately  
18 \$45,461,740 (\$0.00 - Holdings) (\$44,353,353.50 - TWC) (\$1,108,387.53 - Big Dog) in  
19 transfers made in the 90-days prior to the Petition Date, as well as \$3,490,646.44 in  
20 transfers made to Insiders during the one-year prior to the Petition Date. However, the  
21 Debtors do not believe that there are any material preference actions that may be available  
22 to the Estates. The Debtors believe that substantially all of their vendors received  
23 payments in the ordinary course of the Debtors business. Furthermore, inasmuch as the  
24 Plan contemplates payment in full of all Allowed General Unsecured Claims against the  
25 estate, the successful prosecution of avoidance actions, which would result in the  
26 reinstatement of a claim in favor of the defendant to the extent of the avoidance recovery,  
27 which would then be satisfied in full under the terms of the Plan, would provide no  
28 economic benefit to the Estates while causing the Estates to incur unnecessary legal fees.

1 Therefore, it is not anticipated that any avoidance actions will be prosecuted during the  
2 Reorganization Cases or after the Effective Date.

3 **III.**

4 **SUMMARY OF THE PLAN OF REORGANIZATION**

5 **A. What Creditors and Interest Holders Will Receive Under The Proposed Plan**

6 As required by the Bankruptcy Code, the Plan classifies claims and interests in  
7 various classes according to their right to priority. The Plan states whether each class of  
8 claims or interests is impaired or unimpaired. The Plan provides the treatment each class  
9 will receive. The following summary of the Plan is qualified in its entirety by the actual  
10 terms of the Plan. In the event of any conflict, the terms of the Plan will control over any  
11 summary set forth in this Disclosure Statement.

12 **B. General Overview**

13 As required by the Bankruptcy Code, the Plan classifies claims and interests in  
14 various classes according to their right to priority of payments as provided in the  
15 Bankruptcy Code. The Plan states whether each class of claims or interests is impaired or  
16 unimpaired. The Plan provides the treatment each class will receive under the Plan. The  
17 categories set forth in this Section and summarized in the following table classify Claims  
18 and Interests for all purposes, including, without limitation, voting, confirmation, and  
19 distribution under the Plan.

20

<b>CLASS</b>	<b>SUMMARY</b>	<b>VOTING STATUS</b>
None	Administrative Claims and Administrative Tax Claims	Not Entitled to Vote
None	Priority Tax Claims	Not Entitled to Vote
Class 1	WFRF's Secured Claims Against the Debtors Under the Prepetition Credit Facility and DIP Facility	Unimpaired – Deemed to Accept
Class 2	The Noteholders' Secured Claims Against the Debtors Under the Notes	Impaired – Entitled to Vote

21  
22  
23  
24  
25  
26  
27  
28

CLASS	SUMMARY	VOTING STATUS
Class 3	Other Secured Claims	Unimpaired – Deemed to Accept
Class 4	Reclamation Claims	Unimpaired – Deemed to Accept
Class 5	Priority Unsecured Claims	Unimpaired – Deemed to Accept
Class 6	General Unsecured Claims-Big Dog	Unimpaired – Deemed to Accept
Class 7	General Unsecured Claims-TWC	Unimpaired – Deemed to Accept
Class 8	General Unsecured Claims-Holdings	Unimpaired – Deemed to Accept
Class 9	Intercompany Claims	Unimpaired – Deemed to Accept
Class 10	Employee Stock Option Claims	Impaired – Entitled to Vote
Class 11	Holdings’ Existing Common Stock	<del>Impaired</del> Unimpaired – Not Entitled to Vote <sup>7</sup>
Class 12	TWC’s Existing Common Stock	Unimpaired – Not Entitled to Vote
Class 13	Big Dog’s Existing Common Stock	Unimpaired – Not Entitled to Vote

The treatment set forth below is in full and complete satisfaction of the legal, contractual, or equitable rights in or against the Debtors of each Person holding an Allowed Claim or Allowed Interest. This treatment supersedes and replaces any agreements or rights those Persons have in or against the Debtors or their respective property. All distributions provided under the Plan will be tendered to the Person holding the Allowed Claim or Allowed Interest. Notwithstanding any agreement to the contrary to which a Debtor is or may be a party (including, without limitation, any prepetition intercreditor or subordination agreement, which will be cancelled and in no force or effect as of the Effective Date), any lien securing a Secured Claim will be void as of the Effective Date, and any lien granted under the Plan will be subject to the Plan’s terms.

<sup>7</sup> ~~The Debtors believe that the Class 11 (Holdings’ Existing Common Stock) on account of certain voting rights and/or other corporate governance matters called for under the Investor Commitment Letter. Accordingly, the Plan contemplates that holders of Class 11 Interest will be entitled to vote. The Debtors will be seeking a determination from this Court in connection with the hearing to approve the Disclosure Statement, and if this Court concludes that the holders of Class 11 Interests are not impaired, then the Plan will be modified to provide that such Persons are deemed to accept the Plan.~~

1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS PLAN,  
2 NO DISTRIBUTIONS WILL BE MADE, AND NO RIGHTS WILL BE  
3 RETAINED, ON ACCOUNT OF ANY CLAIM OR INTEREST THAT IS NOT AN  
4 ALLOWED CLAIM OR AN ALLOWED INTEREST.

5 **C. Unclassified Claims**

6 Certain types of claims are not placed into voting classes; instead they are  
7 unclassified. They are not considered impaired and they do not vote on the Plan because  
8 they are automatically entitled to specific treatment provided for them in the Bankruptcy  
9 Code. As such, the Plan Proponents have not placed the following claims in a class.

10 **1. Administrative Expenses**

11 Administrative expenses are claims for costs or expenses of administering the  
12 Debtors' Reorganization Cases which are allowed under section 503(b) of the Bankruptcy  
13 Code. The Bankruptcy Code requires that all administrative claims be paid on the  
14 Effective Date of the Plan, unless a particular claimant agrees to a different treatment.<sup>34</sup>

15 The following chart lists all of the Debtors' known Section 503(b) Non-Ordinary  
16 Course Administrative Claims:

<i>CLAIMANT</i>	<i>ESTIMATED CLAIM</i>
<i><u>Estate Professionals</u></i>	
Arent Fox LLP	\$771,000
	\$125,000
Kurtzman Carson Consultants	\$150,000
Clear Thinking Group	\$75,000
Tiger Capital Group	\$15,000
Singerlewak	\$8,000
Holthouse Carlin & Van Trigt	\$5,000
Koenig and Associates	



Committee Professionals

Pachulski Stang ~~Ziehl~~ & Jones

\$300,000<sup>87</sup>

BDO Seidman, LLP

\$300,000

503(b)(9) Claims

\$3,500,000

Administrative Tax Claims

\$2,665,000 in sales tax. This number does not including payroll taxes which are processed by the Debtors' payroll company. All administrative taxes are being paid as they become due.

Deleted: Ziehl

The Reorganized Debtors will need to pay approximately \$2 million worth of Administrative Claims on the Effective Date of the Plan unless the claimant has agreed to be paid later or the Court has not yet ruled on the claim. Pursuant to the DIP Order, the Debtors and WFRF are funding the amounts budgeted for their legal advisors, claims agent, and financial advisor, and for the Committee professionals, on a weekly basis, with such amounts being segregated in a professional fee account pending a Court order approving fees and authorizing payment. The estimated fees for the other professionals are expected to be \$28,000 and will be funded from cash generated from operations, the Capital Investment, and approximately \$14 million of availability under the Exit Financing. In addition, Administrative Tax Claims are being paid in the ordinary course of business from cash generated from the Debtors' operations pursuant to the *Final Order Pursuant to 11 U.S.C. Section 105, 361, 362, 363, and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (1) Authorizing incurrence by the Debtors of Post Petition Secured Indebtedness with Priority Over All Secured Indebtedness and with Administrative Superpriority, (2) Granting Liens, (3) Authorizing Use of Cash Collateral by the Debtors Pursuant to 11 U.S.C. Section 363 Providing for Adequate Protection, and (4) Modifying the Automatic Stay* and the Debtors therefore

<sup>87</sup> The DIP Financing Order includes a \$600,000 budget for Committee professionals. The Committee has ~~not~~ provided an allocation of this budget at between their legal counsel and financial advisors. For presentation purposes only, the Debtors have allocated this amount equally between the two Committee professionals.

1 anticipate the amount of any outstanding Administrative Tax Claims on the Effective Date  
2 will be *de minimis*.

3 Unless the Person holding an Allowed Administrative Claim and the Debtors or  
4 Reorganized Debtors agree otherwise, the Disbursing Agent will pay to that Person cash  
5 in the Allowed Administrative Claim's full amount, without interest, on or before the later  
6 of: (a) as soon as reasonably practicable on or after the Effective Date; (b) 30 days after  
7 the date on which the Administrative Claim becomes an Allowed Administrative Claim;  
8 or (c) the date on which the Allowed Administrative Claim becomes due and payable;  
9 provided, however, that holders of Allowed 503(b)(9) Claims will also receive  
10 Postpetition Interest on the face amount of their Allowed 503(b)(9) Claims through the  
11 date of distribution on account of such Allowed 503(b)(9) Claims.

12 The Court must rule on all fees listed in the above chart before the fees will be  
13 owed. For all Professional Fee Claims, the claimant or professional in question must file  
14 and serve a properly noticed fee application and the Court must rule on the application.  
15 Only the amount of fees allowed by the Court will be owed and required to be paid under  
16 this Plan.

17 More specifically, Administrative Claims will be allowed as follows:

18 **Ordinary-Course Administrative Claims:** Unless the Debtors or the Reorganized  
19 Debtors object to an Ordinary-Course Administrative Claim (which claims include  
20 Clerk's Office fees and U.S. Trustee's fees), the Claim will be allowed in accordance with  
21 the terms and conditions of the particular transaction that gave rise to the Ordinary-Course  
22 Administrative Claim, and the Person holding the Ordinary-Course Administrative Claim  
23 need not File any request for payment of its Claim.

24 **Non-Ordinary-Course Administrative Claims:** A Non-Ordinary-Course  
25 Administrative Claim, other than 503(b)(9) Claim, will be allowed only if:

- 26 a) On or before 60 days after the Effective Date, the Person holding the Claim  
27 both Files with the Court a motion requesting that the Debtors or the  
28

1 Reorganized Debtors pay the Non-Ordinary-Course Administrative Claim  
2 and serves the motion on the Debtors or Reorganized Debtors and  
3 Reorganization Counsel; and

- 4 b) The Court, in a Final Order, allows the Non-Ordinary-Course  
5 Administrative Claim.

6 The Court has established April 20, 2010 as the General Bar Date for all persons  
7 and entities to file a proof of claim or interest in these cases or requests for allowance of  
8 503(b)(9) Claims.

9 The Debtors or Reorganized Debtors may File an objection to such a motion, proof  
10 of claim, or request for allowance of a 503(b)(9) Claim within the time provided by the  
11 Bankruptcy Rules or within any other period that the Court establishes. **Persons holding**  
12 **Non-Ordinary-Course Administrative Claims who do not timely File and serve a**  
13 **request for payment will be forever barred from asserting those Claims against the**  
14 **Debtors, the Estates, the Reorganized Debtors, or their respective property.**

15 **Professional Fee Claims.** The Court must approve all Professional Fee Claims.  
16 As set forth below, each professional in question must file and serve a properly noticed  
17 fee application, and the Court must rule on the application. Only the amount of fees  
18 allowed by the Court will be required to be paid under this Plan.

19 A Professional Fee Claim will be allowed only if:

- 20 a) On or before 60 days after the Effective Date, the Person holding the  
21 Professional Fee Claim both Files with the Court a motion requesting that  
22 the Reorganized Debtors pay the Professional Fee Claim and serves the  
23 motion on the Reorganized Debtors and their Reorganization Counsel; and  
24 b) The Professional Fee Claim is allowed by a Final Order.

25 The Reorganized Debtors or any other party in interest may File an objection to  
26 such a motion within the time provided by the Bankruptcy Rules or within any other  
27 period that the Court establishes. **Persons holding Professional Fee Claims who do not**  
28 **timely File and serve a motion for payment will be forever barred from asserting**

1 those Claims against the Debtors, the Estates, the Reorganized Debtors, or their  
2 respective property.

3 Administrative Tax Claims. An Administrative Tax Claim will be allowed only if:

4 a) On or before the later of: (1) 60 days after the Effective Date; or (2) 120  
5 days after a Debtor files the tax return for the underlying taxes with the  
6 applicable governmental unit, the Person holding the Administrative Tax  
7 Claim both Files with the Court either a proof of Administrative Tax Claim  
8 or a motion requesting that the Reorganized Debtor pay the Administrative  
9 Tax Claim and serves the proof of Claim or motion on the Reorganized  
10 Debtor and the Debtors' Reorganization Counsel; and

11 b) The Court, in a Final Order, allows the Administrative Tax Claim.

12 The Reorganized Debtors may File an objection to such a proof of Claim or motion  
13 within the time provided by the Bankruptcy Rules or within any other period that the  
14 Court establishes. **Persons holding Administrative Tax Claims who do not timely File  
15 and serve a proof of Administrative Tax Claim or motion for payment will be  
16 forever barred from asserting those Claims against the Debtors, the Estates, the  
17 Reorganized Debtors, or their respective property, whether the Administrative Tax  
18 Claim is deemed to arise before, on, or after the Effective Date.**

19 **2. Priority Tax Claims**

20 Priority tax claims are certain unsecured income, employment and other taxes  
21 described by Bankruptcy Code Section 507(a)(8). The Bankruptcy Code requires that each  
22 holder of such a Section 507(a)(8) priority tax claim receive the present value of such  
23 claim in deferred cash payments, over a period not exceeding six years from the date of  
24 the assessment of such tax. The Debtors believe that Holdings will have a Priority Tax  
25 Claims for personal property tax assessed prior to the petition of approximately \$19,036.  
26 TWC's Priority Tax Claims include income / sales tax claims in the amount of  
27 approximately \$894,940.79, and personal property taxes in the amount of \$102,097.24.  
28 Big Dog's Priority Tax Claims include sales taxes of \$51,894.92 and personal property

1 tax in the amount of \$13,482.57. Exhibit G lists all of the Debtors' known Section  
2 507(a)(8) priority tax claims as of the petition date.

3 Priority Tax Claims are being paid in the ordinary course of business from cash  
4 generated from the Debtors' operations pursuant to the December 18, 2009 Order  
5 Granting Emergency Motion of Debtor for an Order (I) Authorizing the Debtor to Pay  
6 Prepetition Sales and Use and Similar Taxes in the Ordinary Course of Business and (II)  
7 Directing Banks and Financial Institutions to Honor and Process Checks and Transfers  
8 Related Thereto, and the Debtors therefore anticipate the amount of any outstanding  
9 Allowed Priority Tax Claims on the Effective Date will be *de minimis*. Unless the Person  
10 holding an Allowed Priority Tax Claim and the Debtors or Reorganized Debtors agree  
11 otherwise, the Reorganized Debtors will pay to that Person, over a period not exceeding  
12 six years from the date on which the underlying tax was assessed, deferred cash payments  
13 in an aggregate amount equal to the amount of the Allowed Priority Tax Claim, plus  
14 simple interest from the Effective Date on the unpaid balance of the Allowed Priority Tax  
15 Claim at the Statutory Interest Rate. The Reorganized Debtors will make these payments  
16 in equal semiannual installments. The first installment will be due on the later of: (a) 30  
17 days after the Effective Date; (b) 30 days after the date on which the Priority Tax Claim  
18 becomes an Allowed Priority Tax Claim; or (c) 30 days after the date on which the  
19 Priority Tax Claim is allowed by a Final Order. Each installment will include simple  
20 interest, in arrears, on the unpaid balance of the Allowed Priority Tax Claim at Statutory  
21 Interest Rate but will include no penalty of any kind. The Reorganized Debtors will have  
22 the right to pay any unpaid balance on an Allowed Priority Tax Claim in full at any time  
23 on or after the Effective Date without premium or penalty of any kind.

24 **D. Classified Claims and Interests**

25 **1. Classes of Secured Claims**

26 Secured claims are claims secured by liens on property of the Estates. The  
27 following discussion lists all classes containing Debtors' secured prepetition claims and  
28 their treatment under this Plan.

1           a.     **Class 1 (WFRF's Secured Claims Against the Debtors Under the**  
2                    **Prepetition Credit Facility and DIP Facility).**

3            **Classification:** Class 1 consists of WFRF's Allowed Secured Claims against the  
4 Debtors under the Prepetition Credit Facility and the DIP Facility, which Claims are  
5 deemed to be fully secured and allowed in full, including interest and legal fees properly  
6 chargeable to the Debtors pursuant to the Prepetition Credit Facility and the DIP Facility.  
7 As of the Petition Date, the Debtors acknowledge that the aggregate amount of WFRF's  
8 Secured Claims was \$25,730,089 plus loans, advances, interest, and legal fees accruing  
9 from and after the Petition Date. During the course of these Reorganization Cases,  
10 pursuant to the DIP Order, WFRF's prepetition secured claim has been repaid in full and  
11 WFRF has made, and shall continue to make through the Effective Date, postpetition  
12 debtor in possession financing loans. Interest and legal fees shall continue to be charged  
13 and paid in accordance with the Prepetition Credit Facility and the DIP Facility until  
14 WFRF's Secured Claims have been fully satisfied.

15           **Treatment:** WFRF has provided TWC and Big Dog with the legally binding  
16 WFRF Commitment Letter to, subject to satisfaction of certain generally customary terms  
17 and conditions set forth therein, provide Exit Financing to TWC and Big Dog on  
18 substantially the same terms and conditions as the Prepetition Credit Facility (including,  
19 but not limited to, such Exit Financing's being secured by a duly perfected, first lien  
20 security interest on substantially all of the Reorganized Debtors' assets), except as  
21 otherwise provided in the WFRF Commitment Letter. The proceeds of the Exit Financing  
22 will be used to refinance the Prepetition Debt and DIP Obligations upon the Effective  
23 Date and to provide financing for working capital, issuance of letters of credit, capital  
24 expenditures, and other general corporate purposes of the Reorganized Debtors. The  
25 refinancing of the Prepetition Debt and DIP Obligations pursuant to the Exit Financing  
26 will be in full satisfaction of all Allowed Class 1 Claims held by WFRF and of all legal,  
27 equitable, and contractual rights to which WFRF is entitled under the Prepetition Credit  
28 Facility or the DIP Facility. On or before the Effective Date, TWC and Big Dog will

1 deliver to WFRF the Post-Confirmation Credit Agreement and other documents related  
2 thereto substantially consistent with the terms and conditions provided in the WFRF  
3 Commitment Letter and the Prepetition Credit Facility and in a principal amount equal to  
4 the outstanding balance of the DIP Facility (estimated to be approximately \$5 million and  
5 Reorganized TWC and Reorganized Big Dog will agree to pay WFRF all amounts due  
6 under the Post-Confirmation Credit Agreement in accordance with such legal, equitable,  
7 and contractual rights as previously existed under the Prepetition Credit Facility. The  
8 obligations under the Post-Confirmation Credit Agreement will be guaranteed by  
9 Reorganized Holdings and secured by duly perfected, first liens on substantially all of the  
10 Reorganized Debtors' assets.

11 **b. Class 2 (The Noteholders' Secured Claims Against the Debtors**  
12 **Under the Notes)**

13 **Classification:** Class 2 consists of the Noteholders' Allowed Secured Claims  
14 against the Debtors under the Notes, which Claims are deemed to be fully secured and  
15 allowed in full, including interest and legal fees properly chargeable to the Debtors  
16 pursuant to the Notes. As of the Petition Date, the Debtors acknowledge that the  
17 aggregate amount of the Noteholders' Secured Claims was \$20.21 million, which includes  
18 principal as well as PIK Interest and interest accrued and owing as of the Petition Date.

19 **Treatment:** On the Effective Date, each of the Notes will be Reinstated; *provided,*  
20 *however,* that the aggregate principal amount of the Notes will be reduced to \$19.5  
21 million, which represents the cancellation of an aggregate of \$960,000 in PIK Interest due  
22 under the Notes as of the Petition Date, and the principal amount of each Note held by a  
23 Noteholder will be reduced by a proportionate amount. The Reinstated Notes will  
24 continue to be secured by substantially all of the assets of the Reorganized Debtors (other  
25 than intellectual property relating to Big Dog, and shall also continue to be subject and  
26 subordinate in lien priority and right of payment to WFRF's liens and claims under the  
27 Exit Facility pursuant to a Subordination Agreement on substantially the same terms and  
28 conditions as the existing Subordination Agreement executed by each Noteholder in favor

1 of WFRF in connection with the Prepetition Credit Facility and otherwise reasonably  
2 satisfactory to WFRF. The holders of Allowed Class 2 Claims will also receive an  
3 aggregate payment of \$423,602 in cash on or before the Distribution Date, as provided for  
4 under the Notes, which represents the interest owing under the Notes for the first quarter  
5 of 2009 plus interest due under the Notes. The holders of Allowed Class 2 Claims will  
6 receive no other distributions or payments under the Plan on account of either principal or  
7 accrued and unpaid interest, PIK Interest, or other obligations under the Notes, except as  
8 expressly provided for herein.

9 **c. Class 3 (Other Secured Claims)**

10 **Classification:** Class 3 consists of all Other Secured Claims.

11 **Treatment:** Unless the Person holding an Allowed Class 3 Claim and the Debtors  
12 or Reorganized Debtors agree otherwise, the Person holding the Claim will receive one or  
13 more of the following treatments as soon as reasonably practicable on or after the  
14 Effective Date in full satisfaction of its Allowed Class 3 Claim:

- 15 a) The Reorganized Debtors will: (1) cure any default, other than those  
16 defaults enumerated in Bankruptcy Code Section 365(b)(2), with respect to  
17 that Person's Allowed Class 3 Claim, without recognizing any default  
18 interest rate or similar penalty or charge, after which no default will exist;  
19 (2) reinstate the maturity date of that Person's Allowed Class 3 Claim to the  
20 maturity date that existed before any default, without recognizing any  
21 default interest rate or similar penalty or charge; (3) compensate that Person  
22 for any actual damages incurred due to that Person's reasonable reliance on  
23 any provision that entitled that Person to accelerate its Allowed Class 3  
24 Claim's maturity; and (4) leave unaltered all of that Person's other legal,  
25 equitable, or contractual rights with respect to its Allowed Class 3 Claim;
- 26 b) The Disbursing Agent will convey to the Person holding the Claim the  
27 collateral in which that Person has a security interest; or  
28



1 c) The Disbursing Agent will pay to the Person holding the Claim cash in the  
2 amount of that Person's Allowed Class 3 Claim.

3 The Debtors or Reorganized Debtors may, in their sole discretion, select which of  
4 these treatments each Person holding an Allowed Class 3 Claim will receive. If, by 14  
5 days before the Confirmation Hearing Date, the Debtors have not notified a Person which  
6 treatment has been selected for that Person's Allowed Class 3 Claim, the Reorganized  
7 Debtors will be deemed to have selected the treatment set forth in Subparagraph (a),  
8 above.

9 **d. Class 4 (Reclamation Claims).**

10 **Classification:** Class 4 consists of the Reclamation Claims.

11 **Treatment:** Each holder of an allowed Class 4 Claim shall receive payment in full  
12 of its allowed Class 4 Claim on or before the Distribution Date, plus Postpetition Interest  
13 on the face amount of its Allowed Class 4 Claims through the date of distribution on  
14 account of such Allowed Class 4 Claim.

15 **2. Classes of Priority Unsecured Claims**

16 Certain priority claims that are referred to in the sections 507(a)(3), (4), (5), and (6)  
17 of the Bankruptcy Code and are required to be placed in classes. These types of claims are  
18 entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of  
19 such a claim receive cash on the Effective Date equal to the allowed amount of such  
20 claim.

21 The Bankruptcy Code provides that holders of Allowed Reclamation Claims and  
22 Allowed Unsecured Priority Claims are generally entitled to be paid Postpetition Interest  
23 on the face amount of their Allowed Claims before Interest holders receive value under a  
24 Chapter 11 plan. Accordingly, the Plan provides for payment of Postpetition Interest on  
25 Allowed Claims identified in Classes 4 and 5 on before the Distribution Date.  
26  
27  
28

1 The following chart lists all classes containing Debtors' 507(a)(3), (4), (5), and (6)  
2 priority unsecured claims and their treatment under this Plan (see Exhibit G for more  
3 detailed information about each priority unsecured claim).

4 **a. Class 5 (Priority Unsecured Claims).**

5 **Classification:** Class 5 consists of all Priority Unsecured Claims other than  
6 Priority Tax Claims.

7 **Treatment:** Unless the Person holding an Allowed Class 5 Claim and the Debtors or the  
8 Reorganized Debtors agree otherwise, in writing, the Disbursing Agent will pay to each  
9 Person holding an Allowed Class 5 Claim cash equal to the amount of the Allowed Class  
10 5 Claim, plus Postpetition Interest on the face amount of their Allowed Class 5 Claim  
11 through the date of distribution on account of such Allowed Claims, on or before the later  
12 of: (a) as soon as reasonably practicable on or after the Effective Date; (b) 30 days after  
13 the date on which the Claim becomes an Allowed Class 5 Claim; or (c) the date on which  
14 the Allowed Class 5 Claim becomes due and payable.

15 **3. Class of General Unsecured Claims**

16 General unsecured claims are unsecured claims not entitled to priority under  
17 section 507(a) of the Bankruptcy Code. The following narrative identifies this Plan's  
18 treatment of the class containing all of Debtors' general unsecured claims (see Exhibit H  
19 for detailed information about each general unsecured claim).

20 The Bankruptcy Code provides that holders of Allowed General Unsecured Claims  
21 are generally entitled to be paid Postpetition Interest on the face amount of their Allowed  
22 Claims before Interest holders receive value under a Chapter 11 plan. Accordingly, the  
23 Plan provides for payment of Postpetition Interest on Allowed Claims identified in  
24 Classes 6 through 8 on before the Distribution Date.

25 **a. Class 6 (General Unsecured Claims-Big Dog).**

26 **Classification:** Class 6 consists of all non-priority, General Unsecured Claims  
27 asserted against Big Dog.  
28

1           **Treatment:** Unless the Person holding an Allowed Class 6 Claim and Big Dog or  
2 Reorganized Big Dog agree otherwise, in writing, on or before the Distribution Date, the  
3 holders of Allowed Class 6 Claims will receive payment in full in cash on account of their  
4 Allowed Class 6 Claims, plus Postpetition Interest on the face amount of their Allowed  
5 Class 6 Claims through the date of distribution on account of such Allowed Class 6  
6 Claims.

7           **b. Class 7 (General Unsecured Claims-TWC).**

8           **Classification:** Class 7 consists of all non-priority, General Unsecured Claims  
9 asserted against TWC.

10           **Treatment:** Unless the Person holding an Allowed Class 7 Claim and TWC or  
11 Reorganized TWC agree otherwise, in writing, on or before the Distribution Date, the  
12 holders of Allowed Class 7 Claims will receive payment in full in cash on account of their  
13 Allowed Class 7 Claims, plus Postpetition Interest on the face amount of their Allowed  
14 Class 7 Claims through the date of distribution on account of such Allowed Class 7  
15 Claims.

16           A settlement agreement has been entered into between Mr. Atchinson and the  
17 Debtors pursuant to which, among other things, the Atchinson Claim will be Allowed in  
18 the total amount of \$1.1 million, of which \$100,000 will be paid on or before the  
19 Distribution Date, and the balance will be paid in full no later than 12 months following  
20 the Effective Date, in exchange for which the Debtors will return to Mr. Atchinson the  
21 Natural Comfort trademark and provide him with a partial release of the restrictions under  
22 the Debtors' Noncompetition and Nonsolicitation Agreement. The proposed payments to  
23 Mr. Atchinson to will be subject to a subordination agreement in favor of WFRF as well  
24 as maintenance of a minimum specified level of availability both for a period before and  
25 after giving effect to the payment under the Exit Facility. Provided that such settlement  
26 agreement is approved by the Bankruptcy Court, the Allowed Atchinson Claim will  
27 receive the treatment provided for in the settlement agreement.

28

1 A further settlement agreement has been entered into with respect to the class  
2 action entitled *Erin Andrews and Keith Park, on behalf of themselves and all others*  
3 *similarly situated, vs. The Walking Company, Does 1 through 100, Inclusive, Defendants,*  
4 filed on December 31, 2008 in Los Angeles Superior Court as Case No. BC404875. The  
5 complaint, as subsequently amended, alleged that the Debtors incorrectly calculated  
6 employees' overtime pay for certain commissioned employees and that, as a result, such  
7 commissioned employees were entitled to wages, interest, and penalties. The parties and  
8 their respective counsel have agreed to a settlement of the litigation, which was approved  
9 by this Court on March 2, 2010 [Docket #269]. The settlement calls for a total payment  
10 of \$165,000 to certain claimants as specified therein, with \$10,000 carved out for the 3rd  
11 party administrator and an additional carve out for the plaintiffs' attorney of not more than  
12 \$55,000 in fees and not more than \$5,000 in costs. The Order approving the settlement  
13 calls for the payment to the administrator to be made within 10 days of entry of such  
14 Order, with the remaining net settlement to be paid on the Effective Date. Accordingly,  
15 notwithstanding anything to the contrary in the Plan, the claims of the class action  
16 claimants will receive the treatment provided for pursuant to the Order approving the class  
17 action settlement agreement.

18 **c. Class 8 (General Unsecured Claims-Holdings).**

19 **Classification:** Class 8 consists of all non-priority, General Unsecured Claims  
20 asserted against Holdings.

21 **Treatment:** Unless the Person holding an Allowed Class 8 Claim and Holdings or  
22 Reorganized Holdings agree otherwise, in writing, on or before the Distribution Date, the  
23 holders of Allowed Class 8 Claims will receive payment in full in cash on account of their  
24 Allowed Class 8 Claims, plus Postpetition Interest on the face amount of their Allowed  
25 Class 8 Claims through the date of distribution on account of such Allowed Class 8  
26 Claims.

27 **d. Class 9 (Intercompany Claims)**

28 **Classification:** Class 9 consists of all Intercompany Claims.

1        **Treatment:** Intercompany Claims will be Reinstated under the Plan, without  
2 interest, penalty, or premium of any kind.

3            **e.      Class 10 (Employee Stock Option Notes)**

4        **Classification:** Class 10 consists of all Claims asserted against Holdings pursuant  
5 to the Employee Stock Option Notes.

6        **Treatment:** Each Employee Stock Option Note will be amended to extend its  
7 maturity date to the date 18 months from the Effective Date of the Plan. All interest  
8 accrued under each Employee Stock Option Note prior to the Effective Date will be  
9 waived by the holders of such Notes. Commencing from and after the Effective Date  
10 interest will resume to accrue on each Employee Stock Option Note at the rate of 7% per  
11 annum on the outstanding principal amount thereof and be payable in accordance with the  
12 terms of the Employee Stock Option Notes. If the Company so elects, it may prepay the  
13 principal amount of any Employee Stock Option Note within 30 days of the Effective  
14 Date at a discount of 20%; *provided, however*, that such prepayments shall not total, in the  
15 aggregate, more than \$499,000. All other terms of the Notes will remain the same.

16            **4.      Class(es) of Interest Holders**

17        Interest holders are the parties who hold ownership interest (*i.e.*, equity interest) in  
18 the Debtors. If the Debtors are a corporation, entities holding preferred or common stock  
19 in the Debtors are interest holders. If the Debtors are a partnership, the interest holders  
20 include both general and limited partners. If the Debtors are individuals, the Debtors are  
21 the interest holders. This section identifies the Plan's treatment of the classes of interest  
22 holders (see Exhibit I for more detailed information about each interest holder).

23            **a.      Class 11 (Holdings' Existing Common Stock).**

24        **Classification:** Class 11 consists of Holdings' Existing Common Stock,  
25 (including, without limitation, any rights to existing warrants and options).

26        **Treatment:** Allowed Class 11 Interests will be Reinstated under the Plan;  
27 ~~*provided, however, that such Interests may be impaired pursuant to the terms of the*~~  
28 ~~*Investor Commitment Lette.*~~

1           **b. Class 12 (TWC's Existing Common Stock).**

2           **Classification:** Class 12 consists of TWC's Existing Common Stock (including,  
3 without limitation, any rights to existing warrants and options).

4           **Treatment:** Allowed Class 12 Interests will be Reinstated under the Plan.

5           **c. Class 13 (Big Dog's Existing Common Stock).**

6           **Classification:** Class 13 consists of Big Dog's Existing Common Stock (including,  
7 without limitation, any rights to existing warrants and options).

8           **Treatment:** Allowed Class 13 Interests will be Reinstated under the Plan.

9 **E. Means of Performing Under the Plan**

10           **1. Exit Financing.**

11           WFRF has provided TWC and Big Dog with the WFRF Commitment Letter,  
12 pursuant to which WFRF has issued a legally binding commitment to provide Exit  
13 Financing, subject to satisfaction of certain generally customary terms and conditions set  
14 forth therein, to TWC and Big Dog on substantially the same terms and conditions as the  
15 Prepetition Credit Facility (including, but not limited to, such Exit Financing's being  
16 secured by a duly perfected, first lien security interest on substantially all of the  
17 Reorganized Debtors' assets), except as otherwise provided in the WFRF Commitment  
18 Letter. The proceeds of the Exit Financing will be used to refinance the Prepetition Debt  
19 and DIP Obligations upon the Effective Date and to provide financing for working capital,  
20 issuance of letters of credit, capital expenditures, and other general corporate purposes of  
21 the Reorganized Debtors. On or before the Effective Date, TWC and Big Dog will deliver  
22 to WFRF the Post-Confirmation Credit Agreement and other documents related thereto  
23 substantially consistent with the terms and conditions provided in the WFRF Commitment  
24 Letter and the Prepetition Credit Facility and in a principal amount equal to the  
25 outstanding balance of the DIP Facility (estimated to be approximately \$5 million, and  
26 Reorganized TWC and Reorganized Big Dog will agree to pay WFRF all amounts due  
27 under the Post-Confirmation Credit Agreement in accordance with such legal, equitable,  
28 and contractual rights as previously existed under the Prepetition Credit Facility. The

1 obligations under the Post-Confirmation Credit Agreement will be guaranteed by  
2 Reorganized Holdings and secured by duly perfected, first liens on substantially all of the  
3 Reorganized Debtors' assets. The principal terms and conditions of the Exit Financing are  
4 set forth below:

5 **Borrowers:** The Walking Company and Big Dog USA, Inc. and each of their  
6 presently existing or hereafter formed or acquired subsidiaries.

7  
8 **Guarantor:** The Walking Company Holdings, Inc.

9 **Agent:** Wells Fargo Retail Finance, LLC.

10  
11 **Lender:** Wells Fargo Retail Finance, LLC together with any other financial  
12 institution becoming a party to the loan documents.

13 **L/C Issuing Bank:** Wells Fargo Bank, N.A., or any other financial institution  
14 reasonably acceptable to the agent.

15 **Credit Facility:** Senior Secured Asset Based Revolving Credit Facility up to  
16 \$30,000,000 including a \$3,000,000 sub-limit for standby and documentary letters  
17 of credit.

18 **Purpose:** The proceeds will be used to refinance the Debtors' obligations under  
19 the Prepetition Credit Facility and the DIP Facility as well as to provide financing  
20 for working capital, issuance of letters of credit, capital expenditures, and other  
21 general corporate purposes.

22 **Priority and Security:** The Exit Financing will be secured by a first priority  
23 security interest in all of the Debtors' assets and all proceeds realized thereof.

24 **Closing Date:** April 15, 2010 (extendable under certain circumstances to May 7,  
25 2010).

26 **Maturity:** Four years from the Closing Date.

27 **Expenses:** The Debtors will agree to pay all reasonable costs of WFRF in  
28 connection with the facility.

1  
2 **Indemnity:** The Debtors agree to indemnify the agent, lenders, and issuing bank.

3 **2. Funding for the Plan**

4 The Plan will be funded by the following: (a) reducing operating expenses by  
5 renegotiating its real estate leases; (b) reducing the amount due under its Notes and  
6 obtaining certain other economic concessions from the Noteholders and certain other  
7 creditors; (c) increasing its capital through a \$10 million capital Investment and the \$30  
8 million Exit Financing; and (d) cash from operations. The \$10 million capital Investment  
9 will be made pursuant to a Investor Commitment Letter between the Investors and the  
10 Debtors, which \$10 million shall be funded into an escrow account no later than 14 days  
11 prior to the Confirmation Hearing Date. Of this \$10 million investment, approximately  
12 \$8.1 million will be used to pay for the Debtors' reorganization costs, including Allowed  
13 Administrative and Priority Claim and Allowed General Unsecured Claims to be paid  
14 within 30 days of the Plan's Effective Date. Any remaining balance will be retained as  
15 working capital for the Reorganized Debtors.

16 **3. Issuance of New Preferred Stock.**

17 The New Preferred Stock will have the attributes set forth in the Investor  
18 Commitment Letter attached to the Plan at Exhibit 4. On or before the Distribution Date,  
19 the New Preferred Stock will be issued to Investors in accordance with the terms of the  
20 Investor Commitment Letter.

21 **4. The Unsecured Claims Reserve.**

22 On the Effective Date, the Debtors shall transfer to a segregated account Cash  
23 on account of all Claims in Classes 4, 5, 6, 7, and 8 in an amount to be established  
24 following the Claims Bar Date but prior to the occurrence of the Effective Date and to  
25 be determined: (a) jointly by the Debtor, the Committee, the Investors, and WFRF, in  
26 their reasonable business judgment, or (b) if the parties are unable to consensually  
27 determine such amount, by the Bankruptcy Court. The Debtors reserve the right to  
28 seek a claims estimation hearing with respect to any Claims in Classes 4, 6, 7, or 8 to



1 the extent necessary to facilitate the creation of the Unsecured Claims Reserve. The  
2 purpose of such Unsecured Claims Reserve is to provide adequate assurance that all  
3 Allowed General Unsecured Claims will receive payment in full as contemplated  
4 under the Plan. The Cash transferred to the Unsecured Claims Reserve pursuant to the  
5 Plan will be free and clear of any and all liens asserted by WFRF and shall be  
6 disregarded for purposes of determining availability under the Exit Financing, including,  
7 but not limited to, whether the Debtors are able to satisfy the conditions to the Wells  
8 Fargo commitment regarding minimum availability.

9 **F. Preservation of Claims and Rights Not Expressly Settled and Released.**

10 **1. General Claims and Rights.**

11 As permitted by Bankruptcy Code Section 1123(b)(3), the Reorganized Debtors  
12 will be revested with, and may enforce, any claims and rights that the Debtors or the  
13 Estates may hold or have against any Person. These claims and rights include, without  
14 limitation:

- 15 a) Any claims or rights under Bankruptcy Code Sections 544 through 550, any  
16 similar state-law provisions, or any similar statute or legal theory;
- 17 b) Any rights of equitable subordination or disallowance;
- 18 c) Any derivative claims that may be brought by or on behalf of the Debtors or  
19 the Estates;
- 20 d) Any other claims or rights of any kind that either the Debtors or the Estates  
21 may have or hold under any applicable law, including any and all claims or  
22 rights referred to in the Schedules; and
- 23 e) Any rights to object to, settle, compromise, or resolve Claims or Interests.

24 The Reorganized Debtors will retain any related recoveries free and clear of all  
25 Claims and Interests and may pursue, settle, or abandon such revested claims and rights,  
26 in accordance with their best interests.

1           **2.     Avoidance Actions.**

2           The Reorganized Debtors will be vested with, and serve as representative of the  
3 Estates with respect to, Avoidance Actions. At any time on or before the Exhibit Filing  
4 Date, the Debtors may elect not to prosecute any potential Avoidance Action against a  
5 Person if the Debtors determine, in good faith, that: (a) the potential Avoidance Action  
6 would not be cost-effective to pursue either because the amounts at issue are *de minimis*  
7 when compared to the litigation costs, because there are significant potential defenses to  
8 the Avoidance Action, or because successful prosecution of the Avoidance Action would  
9 otherwise provide no economic benefit to the Estates; or (b) prosecuting the action would  
10 interfere with the Reorganized Debtors' business relationship with that Person, and  
11 preservation of such business relationship is important to the Reorganized Debtors'  
12 operations. If, by 14 days before the deadline for objections to the Plan, the Debtors have  
13 not Filed with this Court a Schedule of Avoidance Actions setting forth the Debtors'  
14 intent to preserve and pursue a particular Avoidance Action under the Plan, the  
15 Reorganized Debtors will be deemed to have waived the right to preserve or pursue such  
16 Avoidance Action.

17           **3.     Waiver of Preference Claims.**

18           Notwithstanding anything to the contrary herein, the Debtors waive any and all  
19 claims arising under Bankruptcy Code section 547.

20           **G.     Objections to Claims and Interests**

21           Except as otherwise provided with respect to allowance of Administrative Claims,  
22 notice of designation of a Claim or Interest as a Disputed Claim or Interest must be Filed,  
23 and must be served upon the Person holding the Claim or Interest, on or before the Claim  
24 Objection Deadline, and any such claim objection must be Filed and served upon the  
25 Person holding the Claim or Interest no later than 20 days thereafter. The Claim  
26 Objection Deadline is the Business Day that is the later of: (a) 40 days after the Effective  
27 Date; or (b) 40 days after the date on which the particular proof of Claim or Interest was  
28 Filed.

1 **H. The Releases, Waivers & Injunctions**

2 **1. The WFRF Waiver**

3 In consideration for, among other things, the financial accommodations provided  
4 by WFRF during the Reorganization Cases, as well as the Exit Financing, the Debtors, the  
5 Committee (to the extent that the Committee has standing to pursue claims against WFRF  
6 pursuant to the Final DIP Order), the Noteholders, the Investors, and the Reorganized  
7 Debtor (collectively, the "WFRF Releasers")—shall be deemed hereunder to have waived,  
8 released and relinquished any and all obligations, debts, losses, damages, liabilities,  
9 contracts, controversies, agreements, claims, causes of action, and demands of any kind  
10 whatsoever at law or in equity, including without limitation claims under Bankruptcy  
11 Code sections 510, 541, 542, 544, 545, 547, 548, 549, 550, 551 or 553 or any other  
12 provisions of the Bankruptcy Code, direct or indirect, known or unknown, discovered or  
13 undiscovered, asserted or unasserted: (a) either against WFRF or—solely in their  
14 representative capacity as representatives of WFRF—against each of WFRF's officers,  
15 directors, stockholders, partners, agents, employees, consultants, attorneys, accountants,  
16 advisors, affiliates and other representatives (the "WFRF Releasees"); and (b) arising out  
17 of or relating to the Debtors, Claims against the Debtors, the Reorganization Cases, the  
18 Plan, the loans, advances and financial accommodations provided to the Debtors by  
19 WFRF, the Debtors' business operations and/or management of the affairs of the Debtors  
20 and/or their affiliates, arising at any time on or prior to the Effective Date (the "Released  
21 Claims").

22 *The Debtors are not aware of any claims or causes of action against WFRF, and in*  
23 *fact believe that WFRF has played a constructive role in these Reorganization Cases. The*  
24 *preceding provisions are designed solely to facilitate WFRF's provision of the Exit*  
25 *Financing.*

26 **2. The Noteholder Releases**

27 Upon payment in full of the Allowed Claims in Classes 4, and 6 through 8,  
28 hereunder, if Class 2 votes to accept the Plan, in consideration of the cancellation of PIK

1 Interest provided under the Plan with respect to the Noteholders, the Debtors on behalf of  
2 the Estate hereby fully and unconditionally release and forever discharge each Noteholder  
3 who cast a vote to accept the Plan and their attorneys, agents, advisors, professionals,  
4 representatives and assigns (the "Noteholder Releasees'") from and against any and all  
5 claims, causes of action, damages, losses, liabilities, obligations, expenses, debts, dues,  
6 sums of money, accounts, reckonings, contracts, controversies, known or unknown, fixed  
7 or contingent, direct or indirect, accrued or not accrued, liquidated or unliquidated or  
8 suspected or unsuspected, in contract or in tort or otherwise, that the Debtors or the  
9 Estates ever had or may now have, whether directly or indirectly, or by assignment or  
10 succession, against the Noteholder Releasees, or any of them, for, upon, or by reason of  
11 any matter relating to the Notes through the Effective Date. This release shall be effective  
12 as of the Effective Date.

13 *As noted above, the Debtors are currently evaluating all Avoidance Actions, and at*  
14 *any time on or before the Exhibit Filing Date the Debtors may elect not to prosecute any*  
15 *potential Avoidance Actions. With respect to potential Avoidance Actions against the*  
16 *Noteholders, the Debtors have evaluated whether the Estates may seek to avoid payments*  
17 *to the Noteholders, or the grant of security interests to the Noteholders, as either*  
18 *preferences or fraudulent transfers. As a preliminary matter, Notes in the principal*  
19 *amount of only \$3.975 million were issued to Insiders. The remaining Notes, in the*  
20 *principal amount of \$14.525 million, were issued to non-Insiders. The Debtors do not*  
21 *believe that there are any grounds to recharacterize or subordinate the Claims of the non-*  
22 *Insider Noteholders, and the preference period with respect to non-Insiders reaches back*  
23 *only 90 days (unlike the 1-year preference period applicable to Insiders). As part of the*  
24 *Debtors' efforts to achieve an out-of-court restructuring and to avoid bankruptcy, they*  
25 *granted certain security interests to the Noteholders in exchange for financial concessions*  
26 *described above. The Debtors may now have grounds to seek to avoid this grant of*  
27 *security interests if the Noteholders are found not to have provided reasonably equivalent*  
28 *value for the financial concessions, or if aspects of the transaction are found to constitute*

1 a preference payment within the meaning of Bankruptcy Code section 547. However, the  
2 Noteholders have asserted significant defenses, including that the Debtors may not have  
3 been insolvent at the time that many or all of the Noteholder transactions occurred, that  
4 reasonably equivalent value was provided to the Debtors, that significant questions exist  
5 with respect to the viability of the recharacterization doctrine in the Ninth Circuit, and  
6 that there are no equitable grounds on which to subordinate the Notes. And significantly,  
7 even if the Debtors were to avoid some or all of the transfers to the Noteholders, the  
8 Noteholders would then be entitled to unsecured claims against the Debtors under  
9 Bankruptcy Code Section 502(h). Inasmuch as the Plan provides for the payment in full  
10 of all Allowed Unsecured Claims against the Estates, there is no economic advantage to  
11 pursuing such Avoidance Actions. Instead, the Plan provides that if Class 2 accepts the  
12 Plan, thereby cancelling \$960,000 of PIK Interest to which the Noteholders would  
13 otherwise be entitled, then those Noteholders voting to accept the Plan will receive a  
14 release of potential Avoidance Actions as provided for in this Section. The Debtors  
15 believe that the proposed release is a reasonable exercise of their business judgment and  
16 is in the best interest of their Estates and creditors.

17 **3. The Investor Releases**

18 In consideration for the Capital Investment made by the Investors, the Debtors on  
19 behalf of the Estate hereby fully and unconditionally releases and forever discharge the  
20 Investors and their attorneys, agents, advisors, professionals, representatives and assigns  
21 (the "Investor Releasees'") from and against any and all claims, causes of action,  
22 damages, losses, liabilities, obligations, expenses, debts, dues, sums of money, accounts,  
23 reckonings, contracts, controversies, known or unknown, fixed or contingent, direct or  
24 indirect, accrued or not accrued, liquidated or unliquidated or suspected or unsuspected, in  
25 contract or in tort or otherwise, that the Debtors or the Estates ever had, now have or  
26 hereafter can, shall or may have, or may claim to have, whether directly or indirectly, or  
27 by assignment or succession, against the Investor Releasees, or any of them, for, upon, or  
28 by reason of any matter relating to the ownership, management or operation of the

1 Debtors, or to the extent that any Investor is also a Noteholder, for, upon, or by reason of  
2 any matter relating to the Notes, through the Effective Date. This release shall be  
3 effective upon the occurrence of both the Effective Date and the date of funding of the  
4 Capital Investment pursuant to the Commitment Letter.

5 *The Debtors are not aware of any claims or causes of action against the Investors*  
6 *(except to the extent that an Investor may be a Noteholder, as discussed above), and in*  
7 *fact believes that the Investors have played a constructive role in these Reorganization*  
8 *Cases. The preceding provisions are designed solely to facilitate the Investors' provision*  
9 *of the Capital Investment.*

10 **4. The Debtor and Committee Releases**

11 Except to the extent arising from willful misconduct or gross negligence, pursuant  
12 to section 1125(e) of the Bankruptcy Code, any and all Claims, liabilities, causes of  
13 action, rights, damages, costs and obligations held by any party against the Debtors, the  
14 Reorganized Debtors, the Committee and their respective present and former members,  
15 ex-officio members, officers, directors, trustees, employees, attorneys, accountants,  
16 professionals, agents, designees, successors or assigns, and the Debtors and any  
17 Professional Persons (acting in such capacity) employed by any of the foregoing entities,  
18 whether known or unknown, matured or contingent, liquidated or unliquidated, existing,  
19 arising or accruing, whether or not yet due, in any manner related to the administration of  
20 these Reorganization Cases following the Petition Date or the formulation, negotiation,  
21 prosecution or implementation of the Plan, solicitation of acceptances of the Plan, the  
22 pursuit of confirmation of the Plan, the consummation of the Plan, confirmation of the  
23 Plan, or the administration of the Plan or the property to be distributed under the Plan  
24 shall be deemed fully waived, barred, released and discharged in all respects, except in the  
25 case of the Debtors or the Reorganized Debtors, as to rights, obligations, duties, claims  
26 and responsibilities preserved, created or established by terms of the Plan; *provided,*  
27 *however,* that, notwithstanding the foregoing, this provision does not limit the nature of  
28 any objection to the allowance and payment of any Professional Fees or any Insider

1 compensation. Nothing in this section shall be construed to exculpate any entity from  
2 liability for their willful misconduct or gross negligence.

3 *The Debtors are not aware of any claims or causes of action against the Debtors,*  
4 *the Reorganized Debtors, or the Committee in connection with the administration of these*  
5 *Reorganization Cases, and in fact believe that they and the Committee have played a*  
6 *constructive role in these Reorganization Cases. The preceding provisions are designed*  
7 *solely to facilitate the administration of these Reorganization Cases and the confirmation*  
8 *of the Debtors' Plan.*

9 **5. California Civil Code Section 1542**

10 **Section 1542 of the California Civil Code provides as follows: "A general**  
11 **release does not extend to claims which the creditor does not know or suspect to exist**  
12 **in his or her favor at the time of executing the release, which if known by him or her**  
13 **must have materially affected his or her settlement with the debtor."**

14 **6. Post-confirmation Management**

15 **a. The Reorganized Debtors' Directors.**

16 On the Effective Date, the Board of Directors of each of the Reorganized Debtors  
17 will consist of: Fred Kayne, Andrew D. Feshbach, and David Walsh. The membership of  
18 the Board of Directors will be subject to an election at the Reorganized Debtors' annual  
19 meeting in 2010. The Reorganized Debtors' bylaws will provide for cumulative voting  
20 for directors. Fred Kayne receives \$150,000.00 per year in exchange for his services,  
21 which will be continued following the Effective Date. Dave Walsh receives \$25,000 per  
22 year and life insurance, long-term disability, and medical insurance benefits, which will  
23 be continued following the Effective Date. And Mr. Feshbach serves without additional  
24 compensation beyond what he receives as CEO.

25 **b. The Reorganized Debtors' Officers.**

26 The Reorganized Debtors' officers will initially be the same as the prepetition  
27 officers. After the Effective Date, each officer will serve at the pleasure of the Board of  
28 Directors, subject to any agreements that each officer may have with the Reorganized

1 Debtors, which employment agreements will be assumed by the Reorganized Debtors as  
2 of the Effective Date. The initial compensation for the Reorganized Debtors' officers will  
3 be the same as the compensation currently received by such officers as set forth below.  
4 Bonuses, if any, will continue to be entirely within the discretion of the CEO and board.

<u>Executive</u>	<u>Position</u>	<u>Salary</u>
Andrew Feshbach	CEO	\$460,000
Anthony J. Wall	Vice President / GC	\$375,000
Roberta Morris	CFO	\$280,000
Michael Grenley	Senior Vice President – Merchandising	\$300,000
<u>Lee Cox</u>	<u>Senior Vice President – Retail Operations</u>	<u>\$300,000</u>

12 .  
13 **7. Disbursing Agent**

14 The Reorganized Debtors shall act as the disbursing agent for the purpose of  
15 making all distributions provided for under the Plan. The Disbursing Agent shall serve  
16 without bond and shall receive no compensation for distribution services rendered and  
17 expenses incurred pursuant to the Plan.

18 The Disbursing Agent, unless otherwise specified, will make all distributions  
19 required under the Plan. The Reorganized Debtors, as Disbursing Agent, will be vested  
20 with full authority to take any action or execute any document relating to a conveyance or  
21 other transfer that the Debtors could have taken or executed.

22 The Disbursing Agent may employ or contract with other Persons to make or assist  
23 with these distributions. Any Person who the Reorganized Debtors employ to assist with  
24 distributions will receive from the Reorganized Debtors—on terms approved by the  
25 Reorganized Debtors but without further Court approval—reasonable compensation for  
26 the distribution services that they render under the Plan and reimbursement of reasonable  
27 out-of-pocket expenses that they incur in connection with those services.  
28



1 **I. Risk Factors**

2 This Section of the Disclosure Statement identifies a number of risks persons  
3 reviewing the Plan should take into account in determining whether to accept or reject the  
4 Plan. What follows assumes that the Plan is confirmed and the Effective Date occurs.  
5 However, the occurrence of the Effective Date of the Plan is subject to a number of  
6 conditions, the failure of any one of which may prevent the Effective Date from occurring  
7 at all or delay the occurrence of the Effective Date.

8 **1. Risk Related to Plan Securities**

9 **a. The Investor Commitment Letter**

10 The Plan funding contemplates a \$10 million Capital Investment will be made by  
11 the Investors pursuant to the Investor Commitment Letter. The terms and conditions of  
12 the Investor Commitment Letter are set forth in detail at Exhibit 4 to the Plan. If the  
13 Investors do not furnish the capital contemplated under the Investor Commitment Letter,  
14 the Debtors may not have the ability to make the distributions contemplated under the  
15 Plan.

16 **b. Lack of Market**

17 No established market exists for the Preferred Stock, and currently, there is a very  
18 limited market for the Holdings Common Stock. The Debtors do not intend to apply to list  
19 the securities on any national securities exchange or have them quoted on an inter-dealer  
20 quotation system. Accordingly, the Debtors cannot assure the Investors or the holders of  
21 the Holdings Common Stock that any market or liquidity for the Preferred Stock or  
22 Holdings Common Stock will develop. If a trading market does not develop or is not  
23 maintained, the holders may experience difficulty in re-selling their shares. If a market  
24 for the Preferred Stock or Holdings Common Stock does develop, that market may be  
25 discontinued at any time. General declines in any such market or declines in a market for  
26 similar securities may adversely affect the liquidity of, and the trading market for, the  
27 Preferred Stock or Holdings Common Stock. These declines may adversely affect the  
28

1 liquidity and trading market independent of the Reorganized Debtors' financial  
2 performance and prospect.

3 **c. Dividends**

4 The Reorganized Debtors do not anticipate that any dividends will be paid with  
5 respect to the Holdings Common Stock. In addition, the covenants in the Exit Financing  
6 or any future indebtedness may limit the Reorganized Debtors' ability to pay dividends.

7 **d. Transfer Restrictions for Some Holders**

8 The Preferred Stock will be issued under an exemption from registration under the  
9 Securities Act and applicable state securities laws. The Preferred Stock will not be  
10 registered under the Securities Act and, therefore, holders of shares of Preferred Stock  
11 may only offer or sell the shares pursuant to an exemption from, or in transactions not  
12 subject to, the registration requirements of the Securities Act and applicable state  
13 securities laws or pursuant to an effective registration statement.

14 The Holdings Common Stock is expected to be free of new restrictions on transfer,  
15 except that shares held by Persons that are deemed to be "underwriters." as defined in  
16 Bankruptcy Code section 1145, may be subject to certain limitations on transfer described  
17 below under "Securities Law matters."

18 **e. Potential Dilution of Holdings Common Stock**

19 The issuance of shares of Preferred Stock to the Investors could result in dilution of  
20 the equity interests of the holders of Holdings Common Stock, which could adversely  
21 affect the value of the Holding's Common Stock. In addition, the Reorganized Debtors  
22 may need to issue additional equity securities in the future in order to successfully  
23 implement their business plan, if the company does not achieve its projected results or for  
24 other reasons, which could lead to further dilution.

25 **f. The Contemplated Rights Offering**

26 Following the Effective Date, the Reorganized Debtors contemplate making a  
27 rights offering to the holders of the Holdings Common Stock, with the proceeds of that  
28 offering being used to redeem Preferred Stock. The interests to be offered pursuant to the

1 rights offering will constitute 90% of the economic interests in Holdings following the  
2 offering. The terms and conditions upon which such a rights offering may occur will be  
3 as provided in the Investor Commitment Letter and the definitive agreement executed  
4 pursuant thereto.

5 **2. General Factors Affecting the Reorganized Debtors**

6 **a. General Economic Slowdown**

7 The Reorganized Debtors are exposed to risks related to the recent slowdown in the  
8 global economy, which is due to many factors, including decreased consumer confidence,  
9 concerns about inflation, and reduced corporate profits and capital spending. If these  
10 weak economic conditions continue or worsen, or if a wider global economic recession  
11 materializes, the Reorganized Debtors' business, financial condition, and results of  
12 operations may be materially and adversely affected.

13 **b. General Risks of the Retail Industry.**

14 The retail industry, and markets within the retail industry in which the Debtors  
15 compete, are subject to various risks, including: adverse changes in general economic  
16 conditions; evolving consumer preferences; consumer product liability or employee  
17 claims; and the availability and expense of liability insurance.

18 **c. Terrorist Attacks**

19 Terrorist attacks in New York, Washington, DC and Pennsylvania on September  
20 11, 2001 disrupted domestic and international commerce. The continued threat of  
21 terrorism, ongoing military action, escalating conflicts, including those between Israel and  
22 the Palestinians and India and Pakistan, and heightened security measures in response,  
23 may cause significant disruption to commerce throughout the world. The Reorganized  
24 Debtors' business and results of operations could be harmed to the extent that this  
25 disruption results in reduced traffic in retail malls, a general decrease in spending on  
26 consumer footwear, delays in obtaining inventory, or an inability to market effectively and  
27 ship product. The Reorganized Debtors are unable to predict whether the threat of  
28

1 terrorism or the responses to it will result in any long-term commercial disruptions or if  
2 these activities or responses will have a long-term adverse effect on their business, results  
3 of operations, or financial condition.

4 **3. Specific Risks Associated with Purchaser's Future Operations**

5 Each creditor whose distributions will be funded by ongoing operations of the  
6 Reorganized Debtors, or seeking adequate assurance of the Reorganized Debtors' ability  
7 to perform under its executory contracts and ~~an~~expired leases, should  
8 especially analyze and evaluate the risks attendant to the projected operations of the  
9 Reorganized Debtors.

10 **a. Competition.**

11 The Debtors operate in highly competitive markets with a significant number of  
12 companies of varying size, including divisions or subsidiaries of larger companies. Some  
13 competitors have multiple product lines or substantially greater and other resources  
14 available to them. Competitive pressures or other factors could cause the Reorgnaized  
15 Debtors' products to lose market share or result in significant price erosion, which would  
16 have a material adverse effect on the Reorganized Debtors.

17 **b. Reliance on Key Personnel**

18 The Reorganized Debtors depend on key personnel and strong personal  
19 relationships with their landlords and suppliers, and the loss of their current personnel or  
20 failure to hire and retain additional personnel could affect their business negatively. The  
21 Reorganized Debtors depend on their ability to attract and retain highly skilled sales, real  
22 estate, and managerial personnel. They believe that their future success in procuring and  
23 selling quality products and achieving a competitive position will depend in large part on  
24 their ability to identify, recruit, hire, train, retain, and motivate highly skilled personnel.

25 The Reorganized Debtors' success and future prospects ultimately depend largely  
26 on the continued contribution of their senior management, including Adrew D. Feshbach,  
27 their Chief Executive Officer. The Reorganized Debtors might not be able to find  
28 qualified replacements for Mr. Feshbach or other members of the management team if

1 their services were no longer available. The loss of services of one of one or more of  
2 them could have a material adverse affect on the Debtors' business, financial condition,  
3 and results of operations.

4 **c. Tax Consequences**

5 Consummation of the Plan will have significant tax consequences that may  
6 adversely affect the Reorganized Debtors, as discussed in greater detail below.

7 **4. Specific Risks Relating to Financial Condition**

8 **a. Inherent Uncertainty in Projections**

9 The Projections set forth in Exhibit B attached to this Disclosure Statement cover  
10 the Reorganized Debtors' operations through fiscal year 2012. These Projections are  
11 based on certain assumptions, including confirmation and consummation of the Plan in  
12 accordance with its terms, the anticipated future performance of the Reorganized Debtors,  
13 industry performance, general business and economic conditions, and other matters, many  
14 of which are beyond the Debtors' control and some or all of which may not materialize.

15 In addition, unanticipated events and circumstances occurring after the date hereof  
16 may affect the actual financial results of the Debtors' operations. These variations may be  
17 material and may adversely affect Reorganized Debtors' ability to make certain  
18 distributions under the Plan or to perform under its real estate leases, even as modified, or  
19 they may adversely affect the value of the Reorganized Debtors' stock. Because the  
20 actual results achieved throughout the periods covered by the projections may vary from  
21 the projected results, perhaps significantly, the projections should not be relied upon as a  
22 guaranty that the actual results that will occur.

23 **b. Reorganized Debtors' Business Plans**

24 The Reorganized Debtors may make changes to their business, operations, and  
25 current business plans that may have a material impact on the Reorganized Debtors' future  
26 results of operations and the value of the Preferred Stock and the Holdings Common  
27 Stock.

1                   **c. Reorganized Debtors' Operations Might Not Be Profitable Post-**  
2                   **Emergence**

3                   Notwithstanding significant restructuring actions undertaken by the Debtors in an  
4 effort to improve their profitability, the Reorganized Debtors' operations might not be  
5 profitable post-reorganization.

6                   **d. Restrictions Imposed by Indebtedness**

7                   The DIP Facility allowed the Debtors to refinance substantial amounts of  
8 prepetition debt. Due to this refinancing, the Debtors have significant indebtedness under  
9 the DIP Facility. In addition, the DIP Facility includes restrictive financial covenants that  
10 require the Debtors to achieve certain levels of EBITDA. On the Effective Date, the  
11 Debtors anticipate replacing the DIP Facility with the Exit Financing. The Exit Financing  
12 is expected to contain covenants that, among other things and subject to certain  
13 exceptions, could require the Reorganized Debtors to satisfy certain financial covenants  
14 and could limit the ability of the Reorganized Debtors to (a) incur additional indebtedness,  
15 (b) permit subsidiaries to issue debt and/or certain types of preferred stock, (c) pay  
16 dividends or make other restricted payments, (d) sell their assets, (e) enter into  
17 transactions with certain affiliates, (f) create liens, and (g) enter into sale and leaseback  
18 transactions. The ability of the Reorganized Debtors to comply with any of the foregoing  
19 provisions may be affected by events beyond their control. The breach of any of these  
20 covenants could result in a default or event of default under the Exit Financing, which  
21 may result in the entire principal balance becoming immediately due and payable.  
22 Accordingly, these anticipated covenants and the potential for adverse affects upon the  
23 Reorganized Debtors' ability to finance future operations, potential acquisitions, capital  
24 needs or to engage in business activities that may be in their interest, may, among other  
25 things, hinder or prevent the Reorganized Debtors from (a) responding to changing  
26 business and economic conditions, (b) engaging in transactions that might otherwise be  
27 considered beneficial, and (c) implementing their business plan. The ultimate terms and  
28 conditions of the Exit Financing are subject to the conditions of the financial markets at

1 the time a commitment is obtained and the conditions contained in any such commitment  
2 for the Exit Financing once obtained. These terms and conditions may contain additional  
3 or more restrictive covenants than may currently be available. In addition, the interest rate,  
4 fees and other economic terms applicable to the Exit Financing are also subject to the  
5 conditions of the financial markets. Such interest rate, fees or other economic terms may  
6 be higher or more expensive than those currently available.

7 **J. Other Provisions of the Plan**

8 **1. Executory Contracts and Unexpired Leases**

9 **a. Schedule of Assumed Agreements.**

10 On the Effective Date, the Reorganized Debtors will assume the executory  
11 contracts and unexpired leases (except for any agreements that were previously assumed  
12 or rejected by Final Order or under Bankruptcy Code Section 365) that are identified on  
13 Exhibit 1 to the Plan and Exhibit C hereto (Schedule of Assumed Agreements). On the  
14 Effective Date, each of the unexpired leases and executory contracts listed above shall be  
15 assumed as obligations of the Reorganized Debtors. The Confirmation Order will  
16 constitute a Court order approving the assumption, on the Effective Date, of the executory  
17 contracts and unexpired leases then identified on the Schedule of Assumed Agreements.

18 The Debtors reserve the right to amend the Schedule of Assumed Agreements on  
19 or before 14 days before the Confirmation Hearing Date to: (a) delete any executory  
20 contract or unexpired lease and provide for its rejection under Section III.A.2; or (b) add  
21 any executory contract or unexpired lease and provide for its assumption under this  
22 Section. The Debtors will provide notice of any amendment to the Schedule of Assumed  
23 Agreements to the party or parties to the executory contracts or unexpired leases affected  
24 by the amendment.

25 **b. Cure Payments.**

26 The Schedule of Assumed Agreements also identifies any amounts that the Debtors  
27 believe Bankruptcy Code Sections 365(b)(1)(A) or (B) require that the Reorganized  
28 Debtors pay to cure defaults under the executory contracts and unexpired leases to be

1 assumed under the Plan. The Debtors reserve their rights to amend the Schedules of  
2 Assumed Agreements, as described in Section III.I.1.a on or before 14 days before the  
3 Confirmation Hearing Date to modify the cure amount.

4 As required by Bankruptcy Code Section 365(b)(1), any and all monetary defaults  
5 under each executory contract and unexpired lease to be assumed under Section III.I.1.a  
6 will be satisfied in one of the following two ways: (a) the Disbursing Agent will pay to  
7 the non-debtor party to the executory contract or unexpired lease the default amount, as  
8 set forth on the Schedules of Assumed Agreements, in cash as soon as reasonably  
9 practicable on or after the Effective Date; or (b) the Disbursing Agent will satisfy any  
10 other terms that are agreed to by both the Debtors and the non-debtor party to any  
11 executory contract or unexpired lease that will be assumed.

12 **c. Objections to Assumption or Proposed Cure Payments.**

13 Any Person who is a party to an executory contract or unexpired lease that will be  
14 assumed under the Plan and who either contends that the proposed cure payment specified  
15 on the Schedules of Assumed Agreements is incorrect or otherwise objects to the  
16 contemplated assumption must File with the Court and serve upon the Debtors and the  
17 Debtors' Reorganization Counsel a written statement and supporting declaration stating  
18 the basis for its objection. This statement and declaration must be Filed and served by the  
19 later of: (a) 21 days before the Confirmation Hearing Date; or (b) 7 days after the Debtors  
20 File and serve the Schedule of Assumed Agreements, or any amendment thereto. Any  
21 Person who fails to timely File and serve such a statement and declaration will be deemed  
22 to waive any and all objections to both the proposed assumption and the proposed cure  
23 amount.

24 **d. The Cure Reserve.**

25 To the extent a timely-filed objection contends that the cure amount should be  
26 different than the Debtors' proposed cure amount in the Schedules of Assumed  
27 Agreements, the undisputed portion of such cure amount will be paid as set forth above.  
28 On or before the Effective Date, the Debtors will transfer to a segregated Cure Reserve on



1 account of any disputed cure amounts an amount to be agreed upon by the Debtor, the  
2 objecting party, and the Committee prior to the Effective Date, or such other amount as is  
3 determined by the Bankruptcy Court to provide adequate assurance that all cure amounts  
4 will be paid in full as contemplated under the Plan, which Cash shall be free and clear of  
5 any and all liens asserted by WFRF, and shall be disregarded for purposes of determining  
6 availability under the Exit Financing, including, but not limited to, whether the Debtors  
7 are able to satisfy the conditions to the Wells Fargo commitment regarding minimum  
8 availability. Pending resolution of the cure amount, the Debtors will request a status  
9 conference with respect to any outstanding objection approximately 30 to 45 days from  
10 the Confirmation Hearing Date. If, at the status conference, the objection has not been  
11 resolved to the parties' satisfaction, the Court may then, at the status hearing, set a  
12 briefing schedule and a further evidentiary or other hearing to resolve the objections on  
13 their merits. If a dispute arises regarding: (a) the amount of any proposed cure payments;  
14 (b) whether the Debtors have provided adequate assurance of future performance under an  
15 executory contract or unexpired lease to be assumed; or (c) any other matter pertaining to  
16 a proposed assumption, the proposed cure payments will be made within 30 days after  
17 entry of a Final Order resolving the dispute and approving the assumption or a Final Order  
18 consensually resolving such dispute.

19 **2. Rejection of Executory Contracts and Unexpired Leases**

20 **a. Schedule of Rejected Agreements.**

21 The Confirmation Order will constitute a Court order approving the rejection, as of  
22 the Effective Date, of any and all of the agreements that the Debtors executed before the  
23 Petition Date—except for any agreements that were previously assumed or rejected either  
24 by a Final Order or under Bankruptcy Code Section 365 or that will be assumed under  
25 Section III.I.1.a to the extent that these agreements constitute executory contracts or  
26 unexpired leases under Code Section 365. The agreements to be rejected under the Plan  
27 include all executory contracts and unexpired leases listed on Exhibit 2 to the Plan and  
28 Exhibit D hereto (the Schedule of Rejected Agreements). (Listing an agreement on the

1 Schedule of Rejected Agreements is not an admission that the agreement is an executory  
2 contract or unexpired lease or that the Debtors have any liability under the agreement.)

3 The Debtors reserve the right to amend the Schedule of Rejected Agreements on or  
4 before 14 days before the Confirmation Hearing Date to: (a) delete any executory contract  
5 or unexpired lease and provide for its assumption and assignment under Section III.I.1.a;  
6 or (b) add any executory contract or unexpired lease and provide for its rejection under  
7 this Section. The Debtors will provide notice of any amendment to the Schedule of  
8 Rejected Agreements to the party or parties to the agreement affected by the amendment.

9 The order confirming the Plan shall constitute an order approving the rejection of the lease  
10 or contract. If you are a party to a contract or lease to be rejected and you object to the  
11 rejection of your contract or lease, you must file and serve your objection to the Plan  
12 within the deadline for objecting to the confirmation of the Plan, as set forth in the  
13 Disclosure Statement.

14 **b. Bar Date for Rejection Damage Claims.**

15 **ANY REJECTED-LEASE ADMINISTRATIVE CLAIM OR OTHER**  
16 **CLAIM FOR DAMAGES ARISING FROM THE REJECTION UNDER THE**  
17 **PLAN OF AN EXECUTORY CONTRACT OR UNEXPIRED LEASE MUST BE**  
18 **FILED WITH THE COURT AND SERVED UPON THE REORGANIZED**  
19 **DEBTORS AND THEIR REORGANIZATION COUNSEL WITHIN 30 DAYS**  
20 **AFTER THE MAILING OF NOTICE OF ENTRY OF THE CONFIRMATION**  
21 **ORDER.** Any such damage Claims that are not timely Filed and served will be forever  
22 barred and unenforceable against the Debtors, the Reorganized Debtors, the Estates, and  
23 their respective property, and Persons holding these Claims will be barred from receiving  
24 any distributions under the Plan on account of their Rejected-Lease Administrative Claims  
25 or other damage Claims.

1           **3. Postpetition Contracts and Leases.**

2           Except as expressly provided in the Plan or the Confirmation Order, all contracts,  
3 leases, and other agreements that the Debtors entered into after the Petition Date will  
4 remain in full force and effect after the Confirmation Date and the Effective Date.

5           **4. Changes in Rates Subject to Regulatory Commission Approval**

6           The Debtors are not subject to governmental regulatory commission approval of  
7 their rates.

8           **5. Retention of Jurisdiction.**

9           Notwithstanding the entry of the Confirmation Order or the occurrence of the  
10 Effective Date, the Court will retain jurisdiction over the Debtors' Reorganization Cases  
11 after the Effective Date to the fullest extent provided by law, including, without limitation,  
12 the jurisdiction to:

- 13                   a) Allow, disallow, determine, liquidate, classify, establish the priority or  
14                   secured or unsecured status of, estimate, or limit any Claim or Interest;  
15                   b) Grant or deny any and all applications for allowance of compensation or  
16                   reimbursement of expenses authorized under the Bankruptcy Code or the  
17                   Plan for periods ending on or before the Effective Date;  
18                   c) Resolve any motions pending on the Effective Date to assume, assume and  
19                   assign, or reject any executory contract or unexpired lease to which the  
20                   Debtors are parties or with respect to which the Debtors may be liable, and  
21                   to hear, determine, and if necessary, liquidate any and all Claims arising  
22                   from such a motion;  
23                   d) Ensure that distributions to Persons holding Allowed Claims and Allowed  
24                   Interests are accomplished under the Plan provisions;  
25                   e) Resolve any and all applications, motions, adversary proceedings, and other  
26                   matters that involve the Debtors and that are pending before the Court on  
27                   the Effective Date;  
28

- 1 f) Enter any orders necessary or appropriate to implement, consummate, or  
2 enforce the provisions of the Plan and of all contracts, instruments, releases,  
3 and other agreements or documents entered into under or in connection with  
4 the Plan;
- 5 g) Resolve any and all controversies, suits, or issues that may arise either in  
6 connection with the Plan's consummation, interpretation, or enforcement or  
7 in connection with any Person's rights or obligations under the Plan;
- 8 h) Under Bankruptcy Code Section 1127, modify the Plan, the Disclosure  
9 Statement, or any contract, instrument, release, or other agreement or  
10 document created in connection with the Plan or Disclosure Statement;
- 11 i) Remedy—in any manner necessary and appropriate to consummate the Plan  
12 and to the extent authorized by the Bankruptcy Code—any defect, omission,  
13 or inconsistency in any Court order, the Plan, the Disclosure Statement, or  
14 any contract, instrument, release, or other agreement or document created in  
15 connection with the Plan or Disclosure Statement;
- 16 j) Issue injunctions, enter and implement orders, or take any other actions that  
17 may be necessary or appropriate to restrict any Person's interference with  
18 the Plan's consummation or enforcement;
- 19 k) Enter and implement any orders that are necessary and appropriate if the  
20 Confirmation Order is for any reason modified, stayed, reversed, revoked, or  
21 vacated;
- 22 l) Determine any other matters that may arise in connection with, or relate to,  
23 the Plan, the Disclosure Statement, the Confirmation Order, or any contract,  
24 instrument, release, or other agreement or document created in connection  
25 with the Plan or the Disclosure Statement; and
- 26 m) Enter an order closing the Debtors' Reorganization Cases.
- 27  
28

1 If the Court abstains from exercising jurisdiction, or is without jurisdiction, over  
2 any matter, this Section will not effect, control, prohibit, or limit the exercise of  
3 jurisdiction by any other court that has jurisdiction over that matter.

4 **K. Tax Consequences of Plan**

5 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE  
6 PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR  
7 OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following  
8 disclosure of possible tax consequences is intended solely for the purpose of alerting  
9 readers about possible tax issues this Plan may present to the Debtors. The Plan  
10 Proponents CANNOT and DOES NOT represent that the tax consequences contained  
11 below are the only tax consequences of the Plan because the Tax Code embodies many  
12 complicated rules which make it difficult to state completely and accurately all the tax  
13 implications of any action.

14 **1. Federal Income Tax Consequences of the Plan to the Debtors**

15 The following is a general summary of certain significant U.S. federal income tax  
16 consequences of the Plan to the Debtors and the Holders of certain Claims and Interests.  
17 This summary is based upon the Internal Revenue Code of 1986, as amended (the "Tax  
18 Code"), the Treasury Department regulations promulgated thereunder ("Treasury  
19 Regulations"), judicial decisions and current administrative rulings and practice as in  
20 effect on the date hereof. These authorities are all subject to change at any time by  
21 legislative, judicial or administrative action, and such change may be applied retroactively  
22 in a manner that could adversely affect Holders of Claims or Interests and the Debtors.

23 Due to a lack of definitive judicial or administrative authority or interpretation, the  
24 complexity of the application of the Tax Code and Treasury Regulations to the  
25 implementation of the Plan, the possibility of changes in the law, the differences in the  
26 nature of various Claims and Interests and the potential for disputes as to legal and factual  
27 matters, the tax consequences discussed below are subject to substantial uncertainties.

28

1                   **a. Net Operating Loss Carryover**

2           The Debtors, whose tax returns are prepared on a consolidated basis, have an  
3 approximately \$17 million net operating loss (“NOL”) carryovers from their taxable year  
4 ending December 31, 2008 and expect to have additional NOLs for the year ending  
5 December 31, 2009. The Debtors believe that under the Plan they may be able to preserve  
6 the NOLs. However, there is much uncertainty regarding whether, to what extent, and at  
7 what rate, those NOL carryovers will be available to the Reorganized Debtors given the  
8 change in ownership provisions of the Tax Code. If the amount of the NOLs or the rate at  
9 which the Reorganized Debtors can use the NOLs in the future is limited because of such  
10 provisions, the value of those Debtors will be reduced accordingly.

11                   **b. Realization of Cancellation of Indebtedness Income**

12           Generally, a taxpayer recognizes cancellation of indebtedness (“COD”) income  
13 upon satisfaction of its outstanding indebtedness for less than its adjusted issue price. The  
14 amount of COD income is, in general, the excess of (i) the amount of the indebtedness  
15 satisfied, over (ii) the amount of cash and the fair market value of any other consideration  
16 (including any new indebtedness issued by the taxpayer or stock of the taxpayer) given in  
17 exchange for the indebtedness satisfied.

18           Each of the Debtors generally must include in its gross income the amount of any  
19 COD income that is realized during the taxable year. However, COD income is not  
20 included in gross income to a debtor if the discharge occurs in a formal Title 11  
21 bankruptcy case or when the debtor is insolvent (except with respect to certain discharged  
22 intercompany debt which is discussed below). Rather the debtor generally must instead,  
23 after determining its tax for the taxable year of discharge, reduce its NOLs and any capital  
24 losses and loss carryovers first and then, as of the first day of the next taxable year, reduce  
25 the tax basis of its assets by the amount of COD income excluded from gross income.  
26 Pursuant to applicable Treasury Regulations, the tax basis of the debtor’s assets used in its  
27 trade or business or held for investment are to be reduced before reducing the tax basis in  
28 the debtor’s inventory, accounts receivables or notes. As an exception to the order of

1 reduction described above, a taxpayer may elect to reduce its tax basis in its depreciable  
2 assets first, then its NOLs. COD income realized from the discharge of intercompany  
3 debt is generally not excluded from gross income but rather is offset by a corresponding  
4 bad debt deduction to the intercompany lender. The Debtors believe that as a result of the  
5 transactions contemplated by the Plan they may realize certain COD income with respect  
6 to the reduction in the principal amount of the Notes and as a result of the change in terms  
7 (including the waiver of interest) of the Employee Stock Option Notes. Also, if the  
8 Debtors elect to prepay those Employee Stock Option Notes at a discount of 20%, it is  
9 very uncertain whether any resultant COD income could be excluded from gross income  
10 under the favorable rules described above regarding discharges of debt in a Title 11  
11 bankruptcy case.

12 **c. Alternative Minimum Tax**

13 A corporation generally must pay an alternative minimum tax (“AMT”) equal to 20  
14 percent of its alternative minimum taxable income (“AMTI”) reduced by certain credits  
15 allowable for AMT purposes to the extent that the AMT exceeds the tax of the corporation  
16 calculated at the normal progressive income tax rates. In calculating the AMTI, a  
17 corporation’s income and losses are subject to various adjustments. For example, in  
18 computing AMTI, a corporation’s NOLs are adjusted for the adjustments and preferences  
19 under the AMT sections of the Tax Code, and such resulting NOLs cannot be utilized to  
20 fully offset the corporation’s AMTI (determined before the NOL deduction). However,  
21 COD income that is excluded from taxable income under the rules discussed above  
22 similarly is excluded from AMTI.

23 **2. Federal Income Tax Consequences of the Plan to Holders of Claims and**  
24 **Interests**

25 The Debtors will withhold distributions provided under the Plan and required by  
26 law to be withheld and will comply with all applicable reporting requirements of the Tax  
27 Code. Under the Tax Code, interest, dividends and other “reportable payments” may  
28 under certain circumstances be subject to “backup withholding”. Backup withholding

1 generally applies if the Holder (i) fails to furnish his social security number or other  
2 taxpayer identification number (“TIN”), (ii) furnishes an incorrect TIN, (iii) fails to report  
3 interest or dividends, or (iv) under certain circumstances fails to provide a certified  
4 statement, signed under penalty of perjury, that the TIN provided is his correct TIN and  
5 the Holder is not subject to backup withholding. Your Ballot contains a place to indicate  
6 your TIN. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO SEEK  
7 ADVICE FROM HIS OR HER OWN TAX ADVISOR WITH RESPECT TO THE  
8 FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND, IF APPLICABLE,  
9 STATE AND LOCAL TAX CONSEQUENCES.

10 **L. Securities Law Matters**

11 The securities law considerations detailed below pertain to the issuance by the  
12 Reorganized Debtors of the Preferred Stock, which is to be distributed under the Plan, and  
13 to the Holdings’ Common Stock which is to be Reinstated under the Plan. The Debtors  
14 have not filed, and do not intend to file, a registration statement under the Securities Act  
15 or any other federal or state securities laws with respect to the issuance of the Preferred  
16 Stock or the Reinstatement of the Holdings Common Stock.

17 The issuance by the Reorganized Debtors of the Preferred Stock shall be exempt  
18 from the registration requirements of the Securities Act of 1933, as amended (the  
19 “Securities Act”) by virtue of the exemption provided in Section 4(2) thereunder. The  
20 Debtors are relying on this exemption based upon the representations of each Investor  
21 that: (a) such Investor understands that the Preferred Stock will not be registered under  
22 the Securities Act, (b) such Investor has substantial experience in evaluating and  
23 investing in private placement transactions of securities so that the Investor is capable of  
24 evaluating the merits and risks of the investment in the Preferred Stock and has the  
25 capacity to protect its own interests, and can afford the loss of its investment in the  
26 Preferred Stock; (c) such Investor is acquiring the Preferred Stock for his or its own  
27 account for investment only, and not with a view towards their sale or distribution, (d)  
28 such Investor agrees that the Preferred Stock may not be sold or transferred unless such



1 Preferred Stock has subsequently been registered under the Securities Act or an exemption  
2 from registration is available and such shares are sold or otherwise transferred in  
3 accordance therewith, and (e) such Investor is an "accredited investor" within the meaning  
4 of Regulation D under the Securities Act.

5 The Preferred Stock will constitute "restricted securities" within the meaning of  
6 Rule 144 under the Securities Act and may not be sold, pledged or otherwise disposed of  
7 unless it is subsequently registered under the Securities Act and registered or qualified  
8 under any applicable state securities laws or unless an exemption from registration is  
9 available.

10 The Debtors do not believe that the Reinstatement of the Holdings Common Stock  
11 constitutes a transaction subject to the Securities Act. However, if the Reinstatement of  
12 the Holdings Common Stock is deemed to be subject to the Securities Act, the  
13 Reorganized Debtors, to the extent set forth herein, will rely on Bankruptcy Code section  
14 1145(a) to exempt from registration under the Securities Act and any applicable state  
15 securities laws the offer, any deemed issuance and sale of Holdings Common Stock that  
16 may be deemed to be made pursuant to the Plan.

17 Generally, Bankruptcy Code section 1145(a)(1) exempts the offer and sale of  
18 securities of the Debtor pursuant to a plan of reorganization from such registration  
19 requirements if the following conditions are satisfied: (a) the securities are issued by a  
20 debtor (or its affiliate or successor to the debtor) under a plan of reorganization; (b) the  
21 recipients of the securities hold a claim against, an interest in, or a claim for an  
22 administrative expense against, the debtor; and (c) the securities are issued entirely in  
23 exchange for the recipient's claim against or interest in the debtor, or are issued  
24 "principally" in such exchange and "partly for cash or property." The Debtors believe  
25 that, for purposes of Bankruptcy Code section 1145(a)(1), the Reorganized Debtors  
26 should be deemed a successor to the Debtors because, among other things, the Debtors'  
27 assets will be revesting in the Reorganized Debtors in accordance with the provisions of  
28 the Plan. The Debtors maintain that any deemed issuance of the Holdings Common Stock

1 to the holders pursuant to the Plan is exempt from the registration requirements under the  
2 Securities Act.

3 The Holdings Common Stock, if deemed distributed pursuant to the exemption  
4 provided under Bankruptcy Code section 1145 under the Plan, is deemed to have been  
5 sold in a "public offering," and therefore may be resold by the holders thereof without  
6 restriction, except for any such holder that is deemed to be an "underwriter" as defined in  
7 Code section 1145(b)(1) with respect to the Holdings Common Stock. Generally, Code  
8 section 1145(b)(1) defines an "underwriter" as any person who (a) purchases a claim  
9 against, or an interest in, a debtor with a view towards distribution of any security to be  
10 received in exchange for such claim or interest, (b) offers to sell securities issued pursuant  
11 to a bankruptcy plan for the holders of such securities, (c) offers to buy securities issued  
12 pursuant to a bankruptcy plan from persons receiving such securities, if the offer to buy is  
13 made with a view towards distribution of such securities, or (d) is an issuer within the  
14 meaning of Section 2(11) of the Securities Act. Section 2(11) of the Securities Act  
15 provides that the term "issuer" includes all persons who, directly or indirectly, through  
16 one or more intermediaries, control, or are controlled by, or are under common control  
17 with, an issuer of securities. Under Rule 405 of Regulation C under the Securities Act,  
18 the term "control" means the possession, direct or indirect, of the Reorganized Debtors to  
19 direct or cause the direction of the management and policies of a person, whether through  
20 the ownership of voting securities, by contract or otherwise. Accordingly, an officer or  
21 director of a reorganized debtor (or its affiliate or successor) under a plan of  
22 reorganization may be deemed to "control" such debtor (and therefore be an underwriter  
23 for purposes of Code section 1145), particularly if such management position is coupled  
24 with the ownership of a significant percentage of a debtor's (or its affiliate's or successor's)  
25 voting securities. Any person that is an "underwriter" but not an "issuer" with respect to  
26 an issue of securities is entitled to engage in exempt "ordinary trading transactions" within  
27 the meaning of Code section 1145(b).

28 Holders of such securities who are deemed to be "underwriters" within the meaning

1 of Code section 1145(b)(1) or who may otherwise be deemed to be "underwriters" of, or  
2 to exercise "control" over, the Reorganized Debtors within the meaning of Rule 405 of  
3 Regulation C under the Securities Act should, assuming all other conditions of Rule 144A  
4 are met, be entitled to avail themselves of the safe harbor resale provisions thereof. Rule  
5 144A, promulgated under the Securities Act, provides a non-exclusive safe harbor  
6 exemption from the registration requirements of the Securities Act for resales to certain  
7 "qualified institutional buyers" of securities which are not securities of the same class of  
8 securities then listed on a national securities exchange (registered as such under Section 6  
9 of the Exchange Act) or quoted in a U.S. automated interdealer quotation system (e.g.,  
10 NASDAQ). Under Rule 144A, a "qualified institutional buyer" is defined to include,  
11 among other persons (e.g., "dealers" registered as such pursuant to Section 15 of the  
12 Exchange Act and "banks" as defined in Section 3(a)(2) of the Securities Act), any entity  
13 which purchases securities for its own account or for the account of another qualified  
14 institutional buyer and which (in the aggregate) owns and invests on a discretionary basis  
15 at least \$100 million in the securities of unaffiliated issuers.

16 Holders of Holdings Common Stock distributed under the Plan who may be  
17 deemed to be "underwriters" within the meaning of Code section 1145(b)(1), and persons  
18 who are affiliates of the Reorganized Debtors, may also be able to sell such securities  
19 pursuant to the safe harbor resale provisions of Rule 144 promulgated under the Securities  
20 Act. Generally, such persons may resell their securities if, among other things, the  
21 conditions of such Rule relating to volume limitations, manner of sale, and availability of  
22 current information about the issuer, are satisfied. Such persons will not be subject to the  
23 holding period requirements of Rule 144 since the securities to be received under the Plan  
24 will not be deemed "restricted securities" within the meaning of Rule 144.

25 IN VIEW OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION  
26 OF WHETHER A HOLDER OF THE HOLDINGS COMMON STOCK MAY BE AN  
27 UNDERWRITER OR AN AFFILIATE OF THE REORGANIZED DEBTORS, THE  
28 DEBTORS MAKES NO REPRESENTATIONS CONCERNING THE RIGHT OF ANY

1 SUCH PERSON TO TRADE IN ANY HOLDINGS COMMON STOCK DEEMED TO  
2 BE DISTRIBUTED PURSUANT TO THE PLAN. ACCORDINGLY, THE DEBTORS  
3 RECOMMEND THAT THE PERSONS HOLDING HOLDINGS COMMON STOCK  
4 CONSULT THEIR OWN COUNSEL CONCERNING WHETHER THEY MAY  
5 FREELY TRADE SUCH SECURITIES.

6 At the Confirmation Hearing, the Debtors will request that the exemption from the  
7 requirements of Section 5 of the Securities Act, 15 U.S.C. § 77e, and any state or local  
8 law requiring registration or qualification for the offer or sale of a security, provided  
9 under Code section 1145 shall apply to any deemed issuance by the Reorganized Debtors  
10 of Holdings Preferred Stock and any deemed distribution of such securities by the  
11 Reorganized Debtors pursuant to the Plan.

12 **IV.**

13 **CONFIRMATION REQUIREMENTS AND PROCEDURES**

14 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THIS  
15 PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW  
16 ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The  
17 following discussion is intended solely for the purpose of alerting readers about basic  
18 confirmation issues, which they may wish to consider, as well as certain deadlines for  
19 filing claims. The Plan Proponents CANNOT and DOES NOT represent that the  
20 discussion contained below is a complete summary of the law on this topic.

21 Many requirements must be met before the Court can confirm a Plan. Some of the  
22 requirements include that the Plan must be proposed in good faith, acceptance of the Plan,  
23 whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7  
24 liquidation, and whether the Plan is feasible. These requirements are not the only  
25 requirements for confirmation.

1 **A. Who May Vote or Object**

2 **1. Who May Object to Confirmation of the Plan**

3 Any party in interest may object to the confirmation of the Plan in the event that  
4 their rights are affected, but as explained below not everyone is entitled to vote to accept  
5 or reject the Plan.

6 **2. Who May Vote to Accept/Reject the Plan**

7 A creditor or interest holder has a right to vote for or against the Plan if that  
8 creditor or interest holder has a claim which is both (1) allowed or allowed for voting  
9 purposes and (2) classified in an impaired class.

10 **a. What Is an Allowed Claim/Interest**

11 As noted above, a creditor or interest holder must first have an allowed claim or  
12 interest to have the right to vote. Generally, any proof of claim or interest will be allowed,  
13 unless a party in interest brings a motion objecting to the claim. When an objection to a  
14 claim or interest is filed, the creditor or interest holder holding the claim or interest cannot  
15 vote unless the Court, after notice and hearing, either overrules the objection or allows the  
16 claim or interest for voting purposes.

17 ~~THE DEBTORS HAVE REQUESTED THAT THE BAR DATE FOR FILING A~~  
18 ~~PROOF OF CLAIM IN THIS CASE BE ESTABLISHED AS MARCH 3,~~The Court has  
19 established a general Bar Date of April 20, 2010. A creditor or interest holder may have  
20 an allowed claim or interest even if a proof of claim or interest was not timely filed. A  
21 claim is deemed allowed if (1) it is scheduled on the Debtors' schedules and such claim is  
22 not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has  
23 objected to the claim. An interest is deemed allowed if it is scheduled and no party in  
24 interest has objected to the interest.

25 **b. What Is an Impaired Claim/Interest**

26 As noted above, an allowed claim or interest only has the right to vote if it is in a  
27 class that is impaired under the Plan. A class is impaired if the Plan alters the legal,  
28 equitable, or contractual rights of the members of that class. For example, a class

1 comprised of general unsecured claims is impaired if the Plan fails to pay the members of  
2 that class 100% of what they are owed.

3 In this case, the Plan Proponents believe that classes ~~2, 10, 2~~ and ~~11~~10 are impaired  
4 and that holders of claims in each of these classes are therefore entitled to vote to accept  
5 or reject the Plan. The Plan Proponents believe that classes 1, 3, 4, 5, 6, 7, 8, 9, 11, 12 and  
6 13 are unimpaired and that holders of claims in each of these classes therefore do not have  
7 the right to vote to accept or reject the Plan. Parties who dispute the Plan Proponents'  
8 characterization of their claim or interest as being impaired or unimpaired may file an  
9 objection to the Plan contending that the Plan Proponents have incorrectly characterized  
10 the class.

11 **3. Who is Not Entitled to Vote**

12 The following four types of claims are not entitled to vote: (1) claims that have  
13 been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant  
14 to Code sections 507(a)(1), (a)(2), and (a)(8); and (4) claims in classes that do not receive  
15 or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote  
16 because such classes are deemed to have accepted the Plan. Claims entitled to priority  
17 pursuant to Code sections 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because  
18 such claims are not placed in classes and they are required to receive certain treatment  
19 specified by the Bankruptcy Code. Claims in classes that do not receive or retain any  
20 value under the Plan do not vote because such classes are deemed to have rejected the  
21 Plan. EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY  
22 STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

23 **4. Who Can Vote in More Than One Class**

24 A creditor whose claim has been allowed in part as a secured claim and in part as  
25 an unsecured claim is entitled to accept or reject a Plan in both capacities by casting one  
26 ballot for the secured part of the claim and another ballot for the unsecured claim.  
27  
28

1           **5.     Votes Necessary to Confirm the Plan**

2           If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one  
3 impaired class has accepted the Plan without counting the votes of any insiders within that  
4 class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible  
5 to be confirmed by “cramdown” on non-accepting classes, as discussed later in Section  
6 [IV.A.8.].

7           **6.     Votes Necessary for a Class to Accept the Plan**

8           A class of claims is considered to have accepted the Plan when more than one-half  
9 (1/2) in number and at least two-thirds (2/3) in dollar amount of the claims which actually  
10 voted, voted in favor of the Plan. A class of interests is considered to have accepted the  
11 Plan when at least two-thirds (2/3) in amount of the interest-holders of such class which  
12 actually voted, voted to accept the Plan.

13           **7.     Treatment of Nonaccepting Classes**

14           As noted above, even if all impaired classes do not accept the proposed Plan, the  
15 Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the  
16 manner required by the Bankruptcy Code. The process by which nonaccepting classes are  
17 forced to be bound by the terms of the Plan is commonly referred to as “cramdown.” The  
18 Bankruptcy Code allows the Plan to be “crammed down” on nonaccepting classes of  
19 claims or interests if it meets all consensual requirements except the voting requirements  
20 of 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable”  
21 toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C.  
22 § 1129(b) and applicable case law.

23           **8.     Request for Confirmation Despite Nonacceptance by Impaired**  
24           **Class(es)**

25           The party proposing this Plan asks the Court to confirm this Plan by cramdown on  
26 impaired ~~Classes 10, 11 and 12 if any of these classes do~~Class 10 if this class does not  
27 vote to accept the Plan.  
28

1 Please note that the proposed Plan treatment described by this Disclosure  
2 Statement cannot be crammed down on the following classes: Class 2. AS A RESULT,  
3 IF CLASS 2 DOES NOT VOTE TO ACCEPT THE PLAN, THE PLAN WILL NOT BE  
4 CONFIRMED.

5 **B. Liquidation Analysis**

6 Another confirmation requirement is the “Best Interest Test”, which requires a  
7 liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an  
8 impaired class and that claimant or interest holder does not vote to accept the Plan, then  
9 that claimant or interest holder must receive or retain under the Plan property of a value  
10 not less than the amount that such holder would receive or retain if the Debtors were  
11 liquidated under Chapter 7 of the Bankruptcy Code.

12 In a Chapter 7 case, the Debtors’ assets are usually sold by a Chapter 7 trustee.  
13 Secured creditors are paid first from the sales proceeds of properties on which the secured  
14 creditor has a lien. Administrative claims are paid next. Next, unsecured creditors are  
15 paid from any remaining sales proceeds, according to their rights to priority. Unsecured  
16 creditors with the same priority share in proportion to the amount of their allowed claim in  
17 relationship to the amount of total allowed unsecured claims. Finally, interest holders  
18 receive the balance that remains after all creditors are paid, if any.

19 For the Court to be able to confirm this Plan, the Court must find that all creditors  
20 and interest holders who do not accept the Plan will receive at least as much under the  
21 Plan as such holders would receive under a Chapter 7 liquidation. The Plan Proponents  
22 maintain that this requirement is met here for the following reasons: The plan provides  
23 for the payment of 100% of all Allowed Priority and General Unsecured Claims as well as  
24 100% of all Allowed Administrative Claims and Allowed Reclamation Claims in these  
25 Reorganization. The Plan also provides for WFRF to receive 100% of its Allowed Class 1  
26 Clams and 95% of the Noteholders’ Allowed Class 2 Claims. Allowed Secured Claims.  
27 Under a Chapter 7 liquidation, unsecured creditors would receive 0% after payment of all  
28 administrative expenses/claims and payment of secured claims.



1 Below is a demonstration, in balance sheet format, that all creditors and interest  
 2 holders will receive at least as much under the Plan as such creditor or interest holder  
 3 would receive under a Chapter 7 liquidation. (See Exhibit D for a detailed explanation of  
 4 how the following assets are valued. This information is provided by the Debtors'  
 5 financial advisor, The Clear Thinking Group, based on information provided by the  
 6 Debtors' management.

<b>ASSETS VALUE AT LIQUIDATION VALUES:</b>	
<b>CURRENT ASSETS</b>	
a. Cash on hand	\$1,998,000
b. Accounts receivable	-
c. Inventories	\$23,100,000
<b>TOTAL CURRENT ASSETS</b>	<b>\$25,098,000</b>
<b>FIXED ASSETS</b>	
a. Furniture, Fixtures & Equipment (Net of Recovery Fee of \$350,135)	\$1,400,539
<b>TOTAL FIXED ASSETS</b>	<b>\$1,400,539</b>
<b>OTHER ASSETS</b>	
a. Intellectual Property (Trademarks, URL's, etc.)	\$750,000
<b>TOTAL OTHER ASSETS</b>	<b>\$750,000</b>
<b>TOTAL ASSETS AT LIQUIDATION VALUE</b>	<b>\$27,248,539</b>
<b>Less:</b>	
Secured creditor's recovery	\$14,595,000
<b>Secured Bondholders</b>	<b>\$19,460,000</b>
<b>Less:</b>	<b>\$1,562,420</b>
Chapter 7 trustee fees and expenses <sup>98</sup>	
<b>Less:</b>	<b>\$9,000,000</b>
Chapter 11 administrative expenses	
<b>Less:</b>	<b>\$3,082,000</b>
Chapter 11 503(b)9 claims	

28 <sup>98</sup> Includes operating expenses incurred in conducting an orderly liquidation.

<b>Less:</b>	
Priority Admin claims	\$1,000,000
(1) Balance for unsecured claims	-0-
(2) Total amt of unsecured claims	\$41,856,000

**% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WOULD RECEIVE OR RETAIN IN A CH. 7 LIQUIDATION<sup>149</sup>: =0%**

**% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WILL RECEIVE OR RETAIN UNDER THIS PLAN: =100%**

Below is a demonstration, in tabular format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or holder would receive under a Chapter 7 liquidation.

<u>CLAIMS &amp; CLASSES<sup>85</sup></u>	<u>PAYOUT PERCENTAGE UNDER THE PLAN</u>	<u>PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION</u>
Administrative Claims	100%	98%
Priority Tax Claims	100%	100%
Class 1 – WFRF’s Secured Claims Against the Debtors Under the Prepetition Credit Facility and DIP Facility	100%	100%
Class 2 – The Noteholders’ Secured Claims Against the Debtors Under the Notes	95%	0%
Class 3 – Other Secured Claims	100%	0%
Class 4 – Reclamation Claims	100%	100%
Class 5 – Priority Unsecured Claims	100%	100%
Class 6 – Atchinson Unsecured Claims	100%	0%

<sup>149</sup>Note: If this percentage is greater than the amount to be paid to the unsecured creditors on a “present value basis” under the Plan, the Plan is not confirmable unless Plan Proponents obtain acceptance by every creditor in the general unsecured class.

<u>CLAIMS &amp; CLASSES</u> <sup>85</sup>	<u>PAYOUT PERCENTAGE UNDER THE PLAN</u>	<u>PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION</u>
Class 7 – General Unsecured Claims-Big Dog	100%	0%
Class 8 – General Unsecured Claims-TWC	100%	0%
Class 9 – General Unsecured Claims-Holdings	100%	0%
Class 10 – Intercompany Claims	100%	0%
Class 11 – HoldCo’s Existing Common Stock	100%	0%
Class 12 – TWC Existing Common Stock	100%	0%
Class 13 – Big Dogs’s Existing Common Stock	100%	0%

**C. Feasibility**

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtors will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Plan Proponents maintain that this aspect of feasibility is satisfied as illustrated here:

Cash Debtors will have on hand by Effective Date	<u>\$11,587,500</u>
<b>To Pay:</b> Administrative claims <sup>++10</sup>	<u>\$ 2,000,000</u>
<b>To Pay:</b> Statutory costs & charges (US Trustee expenses)	<u>\$ 32,275</u>
<b>To Pay:</b> Other Plan Payments due on Effective Date <sup>11 12 -13</sup>	<u>\$ 8,100,000</u>

<sup>++10</sup> The Debtors will pay administrative claims of \$2,000,000 which \$1,587,500 represent professional fees held in Trust. All other administrative claims are being paid in the ordinary course of business

1 Balance after paying these amounts \$ 1,455,225

2 The proceeds of the Exit Financing will be used to refinance the Debtors'  
3 obligations under the Prepetition Credit Facility and the DIP Obligations upon the  
4 Effective Date and to provide financing for working capital, issuance of letters of credit,  
5 capital expenditures, and other general corporate purposes of the Reorganized Debtors.  
6 Borrowings under the Exit Facility will be repaid from the Reorganized Debtors' cash  
7 from operations.

8 The second aspect considers whether the Plan Proponents will have enough cash  
9 over the life of the Plan to make the required Plan payments.

10 The Plan Proponents have provided financial statements which include both  
11 historical and projected financial information. Please refer to Exhibit B for the relevant  
12 financial statements **YOU ARE ADVISED TO CONSULT WITH YOUR**  
13 **ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS**  
14 **PERTAINING TO THESE FINANCIAL STATEMENTS.**

15 Exhibit E provides financial projections for the Reorganized Debtors, including  
16 projected balanced sheets, cash flow statements, and income and expenses statements  
17 (collectively, the "Projections"). The Projections project financial information on an  
18 annual basis for fiscal years 2010 - 2012.

19 The Projections have been prepared by or under the direction of the Debtors. To  
20 the best of the Debtors' knowledge, the projections present the expected financial results  
21 of the Reorganized Debtors for the periods projected, subject to the various assumptions  
22 set forth therein. Readers are urged to review carefully all of the notes and assumptions  
23 including the projections and to consult with their own financial and legal advisors

24 <sup>11</sup> Debtor will pay Allowed Administrative and Priority Claim and Allowed General Unsecured Claims of  
25 approximately \$8.1 million within 30 days of the Effective Date, followed by monthly payments over primarily  
26 the next 12 months totaling ~ \$2.9 million.

27 ~~<sup>12</sup> Debtor will pay Allowed Administrative and Priority Claim and Allowed General Unsecured Claims of~~  
~~approximately \$8.1 million within 30 days of the Effective Date, followed by monthly payments over primarily~~  
~~the next 12 months totaling ~ \$2.9 million.~~

28 <sup>13</sup><sup>12</sup> Debtor will pay Kayne Anderson Capital Advisors a \$2.5 million advisory fee to be paid after the plan  
effective date. Payment is anticipated to be the earlier of the closing of the rights offering or January 31, 2011.

1 regarding the same.

2 The Projections are based upon a variety of estimates and assumptions, which  
3 though considered reasonable at the time they were prepared, may not be realized and are  
4 inherently subject to significant business, economic, and competitive uncertainties and  
5 contingencies, many of which are beyond the Debtors' control. The Debtors caution that  
6 no representations can be made as to the accuracy of the projections or Purchaser's ability  
7 to achieve the projected or illustrated results. Some assumptions inevitably will not  
8 materialize, and events and circumstances occurring after the date on which the  
9 projections were prepared, but which were not then known to the Debtors, may differ  
10 materially from those assumed. The Projections therefore may not be relied upon as a  
11 guarantee or other assurance of the actual results that will occur.

12 The Debtors do not, as a matter of course, publish their business plans and  
13 strategies or projections or their anticipated financial position or results of operations.  
14 Accordingly, the Debtors do not intend to, and disclaims any obligation to, furnish  
15 updated business plans or projections of Purchaser at any time prior to or after the  
16 Effective Date. To assist the reader to understand the Debtors' recent operating  
17 performance, Exhibit B includes the Debtors' unaudited income statement and balance  
18 sheet as of December 31, 2009.

19 In summary, the Plan proposes to pay 100% of all unsecured creditors of its claims  
20 and 100% of all administrative expenses/claims in the case. As Debtors' financial  
21 projections demonstrate, Debtors will have an average cash flow, after paying operating  
22 expenses and post-confirmation taxes, of more than \$8 million each year for the life of the  
23 Plan. The final Plan payment is expected to be paid on May 11, 2011. The Plan  
24 Proponents contend that Debtors' financial projections are feasible.

25 As shown by Debtors' historical financial statements, the Debtors' average yearly  
26 cash flow, after paying operating expenses and post-confirmation taxes, in the three years  
27 preceding the filing of these Reorganization Cases has been approximately \$1.7 million.  
28 The Debtors' average monthly cash flow, after paying operating expenses and post-

1 confirmation taxes, during the Reorganization Cases is approximately \$450,000.  
2 Furthermore, as discussed at length earlier in the Disclosure Statement at Section II., the  
3 Debtors have implemented procedures to decrease costs.

4 **V.**

5 **EFFECT OF CONFIRMATION OF PLAN**

6 **A. Discharge**

7 This Plan provides that upon the Effective Date, Debtors shall be discharged of  
8 liability for payment of debts incurred before confirmation of the Plan, to the extent  
9 specified in 11 U.S.C. § 1141. Any liability imposed by the Plan will not be discharged.  
10 However, this Plan provides that upon the Effective Date, the Debtors will be discharged  
11 of liability for payment of debts incurred before confirmation of the Plan, to the extent  
12 specified in 11 U.S.C. § 1141. The rights afforded under the Plan and the treatment of  
13 Claims and Interests under the Plan will be in exchange for—and in complete satisfaction,  
14 discharge, and release of—all Claims and Interests of any nature whatsoever (including,  
15 without limitation, any interest accrued on Claims from and after the Petition Date except  
16 as such interested is expressly provided for under the Plan) against the Debtors, the  
17 Reorganized Debtors, the Estates, or their property. Except as otherwise provided in the  
18 Plan or the Confirmation Order:

- 19 a) On the Effective Date, the Debtors, the Estates, the Reorganized Debtors,  
20 and their property will, to the fullest extent permitted by Bankruptcy Code  
21 Section 1141, be deemed discharged and released from all Claims and  
22 Interests including, without limitation, demands, liabilities, Claims, and  
23 Interests that arose before the Confirmation Date and all debts of the kind  
24 specified in Bankruptcy Code Sections 502(g), 502(h), or 502(i) regardless  
25 of whether: (1) a proof of Claim or proof of Interest based on such a debt or  
26 Interest is Filed or deemed Filed; (2) a Claim or Interest based on such a  
27 debt or Interest is allowable under Bankruptcy Code Section 502; or (3) the  
28

1 Person holding the Claim or Interest based on such a debt or Interest has  
2 accepted the Plan; and

- 3 b) All Persons will be precluded from asserting against the Debtors, the  
4 Estates, the Reorganized Debtors, or their property any other or further  
5 Claims or Interests based upon any act or omission, transaction, or other  
6 activity of any kind that occurred before the Confirmation Date.

7 **B. Injunction**

8 Except as otherwise provided in the Plan or the Confirmation Order, commencing  
9 on the Effective Date, all Persons who have held, currently hold, or may hold a debt,  
10 Claim, or Interest discharged under the Plan are permanently enjoined from taking any of  
11 the following actions on account of that discharged debt, Claim, or Interest:

- 12 a) Commencing or continuing in any manner any action or other proceeding  
13 against the Debtors, the Estates, the Reorganized Debtors, or their property;  
14 b) Enforcing, attaching, collecting, or recovering in any manner any judgment,  
15 award, decree, or order against the Debtors, the Estates, the Reorganized  
16 Debtors, or their property;  
17 c) Creating, perfecting, or enforcing any lien or encumbrance against the  
18 Debtors, the Estates, the Reorganized Debtors, or their property;  
19 d) Commencing or continuing any action, in any manner or in any place, which  
20 does not comply with or is inconsistent with the Plan provisions or the  
21 Confirmation Order.

22 Any Person injured by a willful violation of this injunction is entitled to recover  
23 from the violator actual damages (including, without limitation, costs and attorneys' fees)  
24 and, in appropriate circumstances, punitive damages.

25 **C. Revesting of Property in the Debtors**

26 Except as otherwise provided in the Plan or in any agreements contemplated under  
27 the Plan, the confirmation of the Plan revests all of the property of the Estates in the  
28 Reorganized Debtors free and clear of all Claims, liens, encumbrances, or Interests.

1 Commencing on the Effective Date, the Reorganized Debtors may operate their business  
2 and use, acquire, or dispose of property or settle or compromise Claims or Interests  
3 without Court supervision and free of any restrictions imposed by the Bankruptcy Code or  
4 Bankruptcy Rules, other than those restrictions that the Plan or Confirmation Order  
5 expressly impose on the Reorganized Debtors..

6 **D. Modification of Plan**

7 Subject to the restrictions set forth in Bankruptcy Code Section 1127, the  
8 Reorganized Debtors reserve the right to alter, amend, or modify the Plan before it is  
9 substantially consummated. The Court may require a new disclosure statement and/or  
10 revoting on the Plan if the Proponent modifies the plan before confirmation. The Debtors  
11 may also seek to modify the Plan at any time after confirmation so long as (a) the Plan has  
12 not been substantially consummated and (b) the Court authorizes the proposed  
13 modifications after notice and a hearing.

14 **E. Dissolution of the Committee.**

15 The Committee shall dissolve on the Effective Date, and the members of the  
16 Committee and counsel for the Committee will be released and discharged from all rights  
17 and duties arising from or related to these Reorganization Cases except for their duties  
18 regarding final applications for compensation. Neither the professionals retained by the  
19 Committee nor the Committee members will be entitled to compensation or  
20 reimbursement of expenses for any services rendered or expenses incurred after the  
21 Effective Date, except for services or expenses relating to their applications for  
22 compensation that were pending on the Effective Date or that were timely Filed after the  
23 Effective Date.

24 **F. Post-Confirmation Status Report**

25 Within 120 days of the entry of the order confirming the Plan, Plan Proponents  
26 shall file a status report with the Court explaining what progress has been made toward  
27 consummation of the confirmed Plan. The status report shall be served on the United  
28 States Trustee, the twenty largest unsecured creditors, and those parties who have



1 requested special notice. Further status reports shall be filed every 120 days and served  
2 on the same entities.

3 **G. Quarterly Fees**

4 Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) to date of confirmation shall  
5 be paid to the United States Trustee on or before the effective date of the Plan. Quarterly  
6 fees accruing under 28 U.S.C. § 1930(a)(6) after confirmation shall be paid to the United  
7 States Trustee in accordance with 28 U.S.C. § 1930(a)(6) until entry of a final decree, or  
8 entry of an order of dismissal or conversion to chapter 7.

9 **H. Post-Confirmation Conversion/Dismissal**

10 A creditor or party in interest may bring a motion to convert or dismiss the case  
11 under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If  
12 the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all  
13 property that had been property of the Chapter 11 Estates and that has not been disbursed  
14 pursuant to the Plan, will revert in the Chapter 7 Estates. The automatic stay will be  
15 reimposed upon the revested property, but only to the extent that relief from stay was not  
16 previously authorized by the Court during these Reorganization Cases.

17 The order confirming the Plan may also be revoked under very limited  
18 circumstances. The Court may revoke the order if the order of confirmation was procured  
19 by fraud and if the party in interest brings an adversary proceeding to revoke confirmation  
20 within 180 days after the entry of the order of confirmation.

21 **I. Final Decree**

22 Once the Estates have been fully administered as referred to in Bankruptcy Rule  
23 3022, the Plan Proponents, or other party as the Court shall designate in the Plan  
24 Confirmation Order, shall file a motion with the Court to obtain a final decree to close the  
25 Cases.

26 **VI.**

27 **RECOMMENDATION AND CONCLUSION**

28 The Debtors believe that Plan confirmation and implementation are preferable to

1 any feasible alternative because the Plan will provide entities holding Claims and Interests  
2 with substantially greater recoveries than the alternatives. **Accordingly, the Debtors**  
3 **urge entities who hold impaired Claims and Interest to vote to accept the Plan by**  
4 **checking the box marked "Accept" on their Ballots and then returning the Ballots to**  
5 **the Debtors as directed in the Plan and Disclosure Statement.**

6  
7 Dated: March 9, 2010

The Walking Company Holdings, Inc.  
The Walking Company, and Big  
Dog USA, Inc..

9  
10 By \_\_\_\_\_

Andrew D. Feshbach  
Chief Executive Officer

11  
12 SUBMITTED BY:

13  
14 /s/ Mette H. Kurth  
Mette H. Kurth,  
Reorganization Counsel for the Debtors  
15 **ARENT FOX LLP**  
16 555 West Fifth Street, 48th Floor  
Los Angeles, CA 90013-1065

Document comparison done by DeltaView on Wednesday, March 17, 2010 12:15:50 PM

Input:	
Document 1	file://C:/Documents and Settings/kirklan/Desktop/ORIGINAL.doc
Document 2	file://C:/Documents and Settings/kirklan/Desktop/MODIFIED.doc
Rendering set	Standard no moves

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
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Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	70
Deletions	69
Moved from	0
Moved to	0
Style change	0
Format changed	1
Total changes	140

In re: THE WALKING COMPANY, a Delaware corporation, d/b/a Alan's Shoes, Footworks, Overland Trading Co., Sole Outdoors, and Martini Shoes; f/k/a TWC Acquisition Corporation; BIG DOG USA, INC., a California corporation, d/b/a Big Dog Sportswear; f/k/a Fortune Dogs, Inc.; and THE WALKING COMPANY HOLDINGS, INC., a Delaware corporation, f/k/a Big Dog Holdings, Inc. and 190<sup>th</sup> Shelf Corporation,  
Debtor(s).

CHAPTER: 11  
CASE NUMBER: 9:09-bk-15138-RR  
[Jointly Administered with Case Nos. 9:09-bk-15137-RR and 9:09-bk-15139-RR]

**NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: Arent Fox, LLP, 555 West Fifth Street, 48th Floor, Los Angeles, CA 90013-1065

A true and correct copy of the foregoing document described as **NOTICE OF FILING OF REDLINE OF DEBTORS' SECOND AMENDED DISCLOSURE STATEMENT FOR DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN (DATED MARCH 9, 2010)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 17, 2010** checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On **March 17, 2010** I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March**, **2010** I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 17, 2010  
Date

Adriane Lark Madkin  
Type Name

/s/ Adriane Lark Madkin  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: THE WALKING COMPANY, a Delaware corporation, d/b/a Alan's Shoes, Footworks, Overland Trading Co., Sole Outdoors, and Martini Shoes; f/k/a TWC Acquisition Corporation; BIG DOG USA, INC., a California corporation, d/b/a Big Dog Sportswear; f/k/a Fortune Dogs, Inc.; and THE WALKING COMPANY HOLDINGS, INC., a Delaware corporation, f/k/a Big Dog Holdings, Inc. and 190<sup>th</sup> Shelf Corporation,  
Debtor(s).

CHAPTER: 11

CASE NUMBER: 9:09-bk-15138-RR

[Jointly Administered with Case Nos. 9:09-bk-15137-RR and 9:09-bk-15139-RR]

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

Craig H Averch on behalf of Creditor The Ad Hoc Committee of The Walking Company Holdings, Inc.  
Noteholders  
caverch@whitecase.com

Lawrence Bass on behalf of Interested Party Gart Capital Partners  
lbass@faegre.com

William C Beall on behalf of Interested Party Courtesy NEF  
artyc@aol.com

Shirley Cho on behalf of Creditor Committee Official Committee Of Unsecured Creditors  
scho@pszjlaw.com

Emily R Culler on behalf of Interested Party Genesco, Inc.  
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Lawrence A Diamant on behalf of Interested Party Kahala Mall  
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Denise Diaz on behalf of Debtor The Walking Company Holdings, Inc.  
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Robert K Edmunds on behalf of Interested Party Huntington National Bank  
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Belkys Escobar on behalf of Creditor County of Loudoun  
belkys.escobar@loudoun.gov

Brian D Fittipaldi on behalf of U.S. Trustee United States Trustee (ND)  
brian.fittipaldi@usdoj.gov

Todd R Gabriel on behalf of Creditor Seaport Village Operating Company  
tgabriel@sparberlaw.com

Brian D Huben on behalf of Creditor Crossgates Mall Company NewCo, LLC  
brian.huben@kattenlaw.com,  
carole.levine@kattenlaw.com; donna.carolo@kattenlaw.com; laura.nefsky@kattenlaw.com

In re: THE WALKING COMPANY, a Delaware corporation, d/b/a Alan's Shoes, Footworks, Overland Trading Co., Sole Outdoors, and Martini Shoes; f/k/a TWC Acquisition Corporation; BIG DOG USA, INC., a California corporation, d/b/a Big Dog Sportswear; f/k/a Fortune Dogs, Inc.; and THE WALKING COMPANY HOLDINGS, INC., a Delaware corporation, f/k/a Big Dog Holdings, Inc. and 190<sup>th</sup> Shelf Corporation,  
Debtor(s).

CHAPTER: 11

CASE NUMBER: 9:09-bk-15138-RR

[Jointly Administered with Case Nos. 9:09-bk-15137-RR and 9:09-bk-15139-RR]

William W Huckins on behalf of Creditor Federal Realty Investment Trust  
whuckins@allenmatkins.com, clynch@allenmatkins.com

Nathan E Jones on behalf of Creditor US Debt Recovery III, LP  
info@usdrllc.com

Steven G Polard on behalf of Creditor Bellevue Square LLC  
spolard@perkinscoie.com

David L Pollack on behalf of Creditor Galleria Mall Investors, LP  
pollack@ballardspahr.com

Hamid R Rafatjoo on behalf of Creditor Committee Official Committee Of Unsecured Creditors  
hrafatjoo@pszjlaw.com, hrafatjoo@pszjlaw.com

Diane W Sanders on behalf of Creditor San Marcos CISD  
austin.bankruptcy@publicans.com

David B Shemano on behalf of Interested Party Courtesy NEF  
dshemano@pwkllp.com

Howard Steinberg on behalf of Creditor Richard A. Kayne, Trustee, Richard & Suzanne Kayne Living Trust dated 1/14/99  
hsteinberg@irell.com, awsmith@irell.com

Wayne R Terry on behalf of Creditor Request for Courtesy NEF  
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Ronald M Tucker on behalf of Creditor Simon Property Group, Inc.  
rtucker@simon.com, psummers@simon.com; rwoodruff@simon.com; shclark@simon.com

United States Trustee (ND)  
ustpreion16.nd.ecf@usdoj.gov

Kimberly S Winick on behalf of Creditor South Coast Plaza  
kwinick@clarktrev.com

Rebecca J Winthrop on behalf of Interested Party Kravco Simon Company  
winthropr@ballardspahr.com

In re: THE WALKING COMPANY, a Delaware corporation, d/b/a Alan's Shoes, Footworks, Overland Trading Co., Sole Outdoors, and Martini Shoes; f/k/a TWC Acquisition Corporation; BIG DOG USA, INC., a California corporation, d/b/a Big Dog Sportswear; f/k/a Fortune Dogs, Inc.; and THE WALKING COMPANY HOLDINGS, INC., a Delaware corporation, f/k/a Big Dog Holdings, Inc. and 190<sup>th</sup> Shelf Corporation,  
Debtor(s).

CHAPTER: 11

CASE NUMBER: 9:09-bk-15138-RR

[Jointly Administered with Case Nos. 9:09-bk-15137-RR and 9:09-bk-15139-RR]

## **II. SERVED BY U.S. MAIL OR OVERNIGHT:**

### **VIA OVERNIGHT DELIVERY**

Honorable Robin Riblet  
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U.S. Securities and Exchange Commission  
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