

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

In the Matter of: )  
)  
Monster Concrete, LLC ) CASE NO.: 18-80280-CRJ11  
EIN: XX-XXX8547 ) CHAPTER 11  
)  
Debtor )

**DEBTOR'S THIRD AMENDED DISCLOSURE**  
**STATEMENT DATED OCTOBER 5, 2018**

**INTRODUCTION**

Monster Concrete, LLC, as Debtor-in-Possession (“Debtor”), filed a voluntary petition under Chapter 11 of Title 11, United States Code (“Bankruptcy Code” or “Code”), on February 1, 2018, in the United States Bankruptcy Court for the Northern District of Alabama, Northern Division (“Bankruptcy Court” or “Court”).

Debtor submits this Third Amended Disclosure Statement dated October 5, 2018 (“Disclosure Statement”), in connection with its Chapter 11 Third Amended Plan of Reorganization dated October 5, 2018, (“Plan”) as required by 11 U.S.C. § 1121. The definitions in the Plan are incorporated by reference. Except where otherwise indicated herein or as defined in the Plan, the terms in this Disclosure Statement have been used as defined in the Bankruptcy Code. The Plan has been filed in the Bankruptcy Court contemporaneously with this Disclosure Statement.

Debtor provides this Disclosure Statement to all of its known creditors and parties in interest to disclose information to be determined by the Bankruptcy Court as adequate for said creditors and parties in interest to reach a reasonably informed decision in connection with the Plan.

The Disclosure Statement describes the circumstances giving rise to filing this petition, summarizes the anticipated future of the Debtor, provides a liquidation analysis and summarizes the Plan. Great effort has been made to describe material matters fully and completely; however, no warranties can be made. Creditors and Interest Holders are urged to read the Plan carefully and are further urged to consult with their counsel in order to fully understand the Plan. The Plan is a legally binding document and is based on complex legal and financial considerations.

Section 1125 of Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 *et. seq.*) requires that the Debtor, as a condition precedent to solicitation of acceptance of its Plan of Reorganization, submit a written Disclosure Statement. The purpose of this document is to set forth sufficient detail to allow each holder of a claim or interest of a particular Class to make an

informed judgment about acceptance of the Plan. Prior to soliciting votes of acceptance from Creditors, the Court must have approved the Disclosure Statement.

### **DISCLAIMER**

NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY REGARDING FUTURE BUSINESS OPERATIONS OF DEBTOR OR THE VALUE OF DEBTOR'S ASSETS, HAVE BEEN AUTHORIZED BY PROPONENT EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT. YOU SHOULD NOT RELY ON ANY OTHER REPRESENTATIONS OR INDUCEMENTS PROFFERED TO YOU TO SECURE YOUR ACCEPTANCE IN ARRIVING AT YOUR DECISION IN VOTING ON THE PLAN. ANY PERSON MAKING REPRESENTATIONS SHOULD BE REPORTED TO COUNSEL FOR DEBTOR AT HEARD, ARY & DAURO, LLC, 303 WILLIAMS AVENUE, SUITE 921, HUNTSVILLE, ALABAMA 35801.

FOR VARIOUS REASONS, THE RECORDS OF PROPONENT PRIOR TO THE PREPARATION OF THIS PLAN HAVE NOT ALWAYS BEEN COMPLETE. THE ACCURACY OF THE INFORMATION SUBMITTED WITH THIS DISCLOSURE STATEMENT IS DEPENDENT UPON ACCOUNTING PERFORMED BY DEBTOR AND DEBTOR'S ACCOUNTANT. WHILE EVERY EFFORT HAS BEEN MADE TO PROVIDE THE MOST ACCURATE INFORMATION AVAILABLE, PROPONENT IS UNABLE TO WARRANT OR REPRESENT THAT ALL INFORMATION IS WITHOUT INACCURACY. NO KNOWN INACCURACIES ARE INCLUDED. WHILE EVERY EFFORT HAS BEEN MADE TO INSURE THAT THE ASSUMPTIONS ARE VALID, UNDER THE CIRCUMSTANCES, NEITHER DEBTOR, ITS ATTORNEY, NOR ITS ACCOUNTANT UNDERTAKE TO CERTIFY OR WARRANT THE ABSOLUTE ACCURACY OF THE PROJECTIONS.

A LIQUIDATION ANALYSIS HAS BEEN UNDERTAKEN OF SUBSTANTIALLY ALL OF THE DEBTOR'S PROPERTY. THE VALUES PLACED ON DEBTOR'S PROPERTY AND SUMMARIZED HEREIN ARE THE DEBTOR'S BEST ESTIMATE OF THE VALUES OF THE PROPERTY OF DEBTOR AS OF THE TIME OF THE FILING OF THIS DISCLOSURE STATEMENT.

THE VALUES HEREIN MAY DIFFER FROM VALUES PLACED ON THE SAME PROPERTY AT THE TIME OF THE FILING OF THE PETITION FOR RELIEF AND THE SUBSEQUENT SCHEDULES.

### **EXPLANATION OF CHAPTER 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor attempts to reorganize this business for the benefit of its creditors and its interest holders pursuant to a plan of reorganization. The Debtor's bankruptcy case was commenced on or about February 1, 2018 ("Petition Date") as a voluntary Chapter 11

bankruptcy case.

Section 362 of the Bankruptcy Code provides for an automatic stay of all attempts to collect claims that arose prior to the Petition Date, or otherwise to interfere with the Debtor's property or business.

Confirmation of a Chapter 11 plan of reorganization requires either that all classes of claims and interests (entitled to vote) accept the plan or that the plan be accepted by the holders of at least one impaired class of claims (not held by "insiders" within the meaning of the Bankruptcy Code) to satisfy the requirements of § 1129(b) of the Bankruptcy Code. A plan of reorganization must also be in the best interests of creditors and interest holders, which essentially means that the cash or other property to be distributed to creditors and interest holders may not be less than they would receive if all of the Debtor's assets were liquidated under Chapter 7 of the Bankruptcy Code.

Acceptance by a class requires that more than one-half in number and at least two-thirds in amount of the total allowed claims who vote in that class vote in favor of the plan. So long as one class of non-insider impaired claims or interests accepts a plan, it need not be accepted by all classes. The Bankruptcy Court may confirm a plan pursuant to its "cramdown" powers under § 1129(b) of the Bankruptcy Code, if it does not discriminate unfairly and is fair and equitable with respect to each impaired, dissenting class.

As is more fully described below, most creditors are impaired and a cramdown may be necessary to confirm the Plan over the objection of any dissenting class. The Plan Proponent believes that the Administrative and Priority Classes of Creditors are unimpaired under the Plan. The claims of creditors in Classes 2 through 3 are impaired. Section 1119(f) provides that a class that is not impaired under the Plan, and each holder of a claim or interest of such class, is conclusively presumed to have accepted the Plan. Solicitation of acceptances with respect to members of such Classes is not required.

Under Section 1121(e) of the Bankruptcy Code, only the Debtor may file a plan of reorganization before the expiration of 120 days from the date of the order for relief. If a plan has been filed, then the Debtor has 45 days from the filing of the plan to have it confirmed under the time provisions are extended under § 1121(e)(3). The exclusivity provisions of 11 U.S.C § 1121 has expired in this case.

### **PROCEDURE FOR FILING PROOFS OF CLAIM AND APPLICATIONS FOR ADMINISTRATIVE EXPENSES**

The Bankruptcy Court established May 7, 2018, as the bar date for filing all Proof of Claims including governmental units. The Plan provides that Claims will be recognized only if evidenced by a timely filed Proof of Claim. A Proof of Claim is deemed "allowed" if it appears in the Debtor's schedules filed with the Bankruptcy Court and is not listed as disputed,

contingent or unliquidated or is not disputed as part of the Plan or objected to by the Debtor pursuant to Rule 3007 of the Federal Bankruptcy Rules or is otherwise allowed by the Bankruptcy Court. The Debtor's schedules may be reviewed during regular business hours in the Office of the Clerk, United States Bankruptcy Court, Decatur, Alabama, or in the office of Heard, Ary & Dauro, LLC, 303 Williams Avenue, Suite 921 Huntsville, Alabama 35801, (256) 535-0817.

### **VOTING PROVISIONS**

Creditors holding Allowed Claims are entitled to vote to accept or reject the Debtor's Plan. **THE COURT WILL FIX A DATE BY WHICH ALL BALLOTS CONCERNING THE PROPOSED PLAN MUST BE FILED WITH THE COURT. ALL BALLOTS MUST BE RECEIVED BY SAID DATE BY THE COURT WITH COPIES TO THE OFFICES OF HEARD, ARY & DAURO, LLC, COUNSEL FOR DEBTOR, at 303 Williams Avenue, Suite 921, Huntsville, Alabama 35801.** No ballots received by the Court after that date will be counted in determining whether the Plan should be confirmed. Even though a creditor may not vote or may vote against the Plan, the creditor will be bound by the terms and treatment set forth in the Plan if the Plan is accepted by the requisite majorities in each Class of creditors and/or is confirmed by the Court.

Creditors who fail to vote will not be counted in determining acceptance or rejection of the Plan. Allowance of a Claim or interest for voting purposes does not necessarily mean that the Claim will be allowed or disallowed for purposes of distribution under the terms of the Plan. Any Claim to which an objection has been or will be made will be allowed only for distribution after determination by the Court. Such determination may be made after the Plan is confirmed.

In order for the Plan to be deemed accepted by a Class of creditors holding Unsecured Claims, creditors that hold at least two-thirds (2/3) of the total dollar amount and more than one-half (1/2) of the total number of Allowed Claims of creditors voting on the Plan must accept the Plan. Under certain limited circumstances more fully described in 11 U.S.C. § 1129 (b), the Court may confirm the Plan notwithstanding the rejection thereof by more than one-third (1/3) in amount or one-half (1/2) in number of the creditors voting on the Plan in any given Class. Debtor intends to seek confirmation under 11 U.S.C. § 1129(b) in the event any Class of creditors rejects the Plan

### **CONFIRMATION OF THE PLAN**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

1. Confirmation Hearing. Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold a hearing on confirmation of the Plan ("Confirmation Hearing"). Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan, regardless of whether it is entitled to vote.

2. Objections to Confirmation. The Court is expected to direct that any objections to the Plan are required to be made in writing in advance of the Confirmation Hearing. The hearing may be adjourned from time to time by the Court without further notice except for an announcement made at the hearing. While the Plan Proponents expect that any hearing to consider objections to the confirmation of the Plan will be held in conjunction with the Confirmation Hearing, there can be no assurance that such will be the case.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY MADE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

3. Requirements for Confirmation of the Plan. At the Confirmation Hearing, the Court will determine whether the requirements of § 1129 of the Bankruptcy Code have been satisfied, in which event the Court will enter an order confirming the Plan. These requirements include:

- (A) Feasibility of the Plan. In order for the Plan to be confirmed, the Court must determine that a further reorganization or subsequent liquidation of the Debtor is not likely to result following confirmation of the Plan. The Debtor believes that the Plan is feasible in that it pays money to satisfy existing Administrative, Priority, and Unsecured Creditors.
- (B) Fair and Equitable Requirement. In order for the Plan to be confirmed, the Court must find that no junior Class will receive any distribution unless each senior Class consents or is paid in full or substantial property is contributed. The Plan Proponents believe that the Plan satisfies this requirement in as much as all Creditors will be paid the present value of their Claim.

### **HISTORY OF THE DEBTOR**

Monster Concrete, LLC is a limited liability company which was organized in Indiana. It started doing business in Alabama in 2013. The Debtor is related to Monster Concrete and Excavation, Inc. (“Monster Concrete and Excavation”), which is also in Chapter 11 in this district and division, Case No. 18-80279, by common ownership.

The Debtor is not actively engaged in business, however Debtor previously operated as a concrete installation and finishing company. The sole shareholder of the Debtor is Mr. Steve Williams. Mr. Williams is also the sole director and officer of the Debtor. Mr Williams possesses over 30 years experience in the construction and concrete industry. Mr. Williams does not receive a salary from Debtor. Mr. Williams receives a salary of \$115,000 from Monster Concrete and Excavation. Monster Concrete and Excavation also pays Mr. Williams’ health insurance premiums.

The Debtor ceased business operations in 2016 upon the formation of Monster Concrete and Excavation, which is its successor company. Most of its assets shown on Exhibit “A” were transferred to or are being utilized by Monster Concrete and Excavation. The Debtor and Monster Concrete and Excavation operated from the same location and in many respects, Monster Concrete and Excavation is a continuation of Debtor. For these reasons, the Debtor seeks to substantively consolidate its case with that of Monster Concrete and Excavation as explained below.

### **SUMMARY OF EVENTS LEADING TO BANKRUPTCY AND OTHER PRE-PETITION MATTERS**

Initially, it should be noted that Debtor’s business is seasonal with the winter months being the slowest period. Many of the Debtor’s problems can be traced back to the decline in the construction industry in 2012 and 2013, which carried over to the Debtor’s business. During this period of time the Debtor fell behind in its withholding tax payments to the United States – Department of Internal Revenue Service (“IRS”). During this time the Debtor hired a former IRS agent to help “negotiate” the repayment of this tax liability. That person advised the Debtor that it should cease operating as a limited liability company, and instead operate as a sub-chapter S Corporation. By doing this, the Debtor was told that it would be easier to negotiate a repayment with the IRS.

The Debtor followed this advice and effectively ceased business operations in December 2016. At that point, the Debtor had various creditors including those shown on Exhibit “B” when it ceased operations. Based on further advice from this agent, Monster Concrete and Excavation commenced operation in December 2016. Upon commencing operations, it acquired or used most of the assets belonging to the Debtor, including those shown on Exhibit “A”. Monster Concrete and Excavation also operated from the Debtor’s former business address, acquired its telephone numbers and its employees. In exchange for those assets, Monster Concrete and Excavation began paying the debts owed by the Debtor, although there is no written agreement.

Ultimately, the Debtor and Monster Concrete and Excavation were unable to reach any agreement with the IRS on the repayment of the tax liability. Consequently, the Debtor filed its case on February 1, 2018. Monster Concrete and Excavation also filed for relief under Chapter 11 of the Bankruptcy Code on February 1, 2018 in an effort to protect its assets and to continue as a going concern.

### **DESCRIPTION OF AVAILABLE ASSETS AND “GOING CONCERN” AND “LIQUIDATION VALUES” AND EQUITY**

Schedules A and B of the Debtor’s bankruptcy schedules identify the Debtor’s personal property. Schedule A shows that Debtor does not have an interest in real property. Schedule B identifies Debtor’s personal property. These assets are described on Exhibit A, which contains a

summary of each asset and its market and liquidation values. The values set forth on Exhibit A are based upon the Debtor’s best judgment as well as several objective measures of value where available. Exhibit A indicates the theoretical equity in these properties were the Debtor to liquidate under Chapter 7 of the Bankruptcy Code. Liquidation values are again based upon the Debtor’s best judgment.

**ESTIMATES OF ADMINISTRATIVE EXPENSES AND CLAIMS ANALYSIS**

Because this case has been administratively consolidated with Monster Concrete and Excavation, the Debtor does not have any administrative claims.

Attached hereto is Exhibit B which is an analysis of: 1) the list of claims or claims register compiled by the Bankruptcy Court; and 2) the schedules showing unfiled claims. This exhibit also indicates whether a claim is allowed or disputed. Exhibit B shall control and take precedence over any variance between Exhibit B and the schedules as to whether a claim is allowed or disputed. The analysis found on Exhibit B is incorporated herein by reference. As discussed herein, it is anticipated that the Allowed Claims will be paid through the Monster Concrete and Excavation case.

Also attached hereto is Exhibit C which is an analysis of the claims filed in the Monster Concrete and Excavation case as well as the unfiled claimes owed by Monster Concrete and Excavation.

**SUMMARY OF FINANCIAL CONDITION AND FEASIBILITY**

As noted herein, the Debtor’s plan is to consolidate its case with that of Monster Concrete and Excavation. Thus a summary of Monster Concrete and Excavation’s financial condition follows. At the time Monster Concrete and Excavation filed its Petition it had assets of approximately \$121,198.81 and liabilities of \$422,302.17.

Monster Concrete and Excavation has filed its Operating Reports with the Court since it filed bankruptcy. As an ongoing construction company, Monster Concrete and Excavation keeps its financial books and records on an accrual basis. A review of the Operating Reports clearly indicate that Monster Concrete and Excavation is becoming more fiscally stable. The chart below summarizes the company’s post petition revenues.

	Feb-18	Mar-18	Apr-18	May-18	Jun-18	18-Jul	Totals
Gross							
Income	\$188,927.87	\$267,104.86	\$276,837.14	\$703,403.20	\$321,291.03	\$229,006.35	\$1,530,537.72
Op.							
Expenses	\$142,590.38	\$187,115.60	\$176,542.19	\$324,168.36	\$66,933.72	\$229,108.35	\$796,752.62
Net Income	\$46,337.49	\$79,989.26	\$100,294.95	\$379,234.84	\$254,357.31	-\$102.00	\$733,785.10

Since Monster Concrete and Excavation’s books are kept on an accrual basis they include recieveables not yet received by it. Monster Concrete and Excavation’s Aging Accounts

Receivable Report shows that Monster Concrete and Excavation has \$597,494 in accounts receivable which have not yet been collected. The company believes, however, that these receivables are collectable as they are either current or are due for 30 days or less.

Monster Concrete and Excavation's Statement of Cash Flow for the period of April, 2018 through July, 2018 is attached as Exhibit D. The Statement of Cash flow provides information about Monster Concrete and Excavation's cash receipts resulting from its business operations. The primary purpose of the statement of cash flows is to provide information about cash receipts, cash payments, and the net change in cash resulting from the operating activities of Monster Concrete and Excavation during the period. The cash at the end of the period must correspond to the current bank balance as shown on the balance sheet for that period. Thus, from a cash flow statement an investor knows the cash in and out of the company for the given period.

A Summary of the Statement of Cash Flows confirms that Monster Concrete and Excavation's finances are stabilizing.

	Apr-18	May-18	Jun-18	18-Jul	Totals
Cash at the end of period	\$6,681.23	\$22,130.51	\$14,085.47	\$51,805.60	\$94,702.81

Since Monster Concrete and Excavation was incorporated in December, 2016 the only historical financial records available relate to 2017. In that year, Monster Concrete and Excavation had gross operating revenues of \$2,806,391. Attached as Exhibit E is a 5 year projected Budget for Monster Concrete and Excavation. This budget is based on an average growth factor of 10% per year which Monster Concrete and Excavation believes is reasonable for this industry. Presently, Monster Concrete and Excavation is forecasting gross revenues of approximately 4 million dollars for fiscal year 2019. The after tax net income for the 60 months following bankruptcy is projected to be **2019:** \$677,818.79; **2020:** \$787,683.93; **2021** \$907,436.95; **2022:** \$970,957.54 and **2023:** \$1,038,924.57.

Debtor opines that if the Court grants the Motion for Substantive Consolidation, Monster Concrete and Excavation will be able to pay its allowed claims as well as Debtor's allowed claims as provided for herein.

### **SUMMARY OF PLAN AND TREATMENT OF CLASSES UNDER THE PLAN**

The Plan will be summarized by incorporation of Article III: Treatment of Classes under the Plan, Article IV: Property of the Estate and Means of Execution of the Plan, and Article V: General Provisions of the Plan. Other provisions of the Plan are extremely important, especially Article I: Definitions. The Plan should be read in full.

#### **1.0 Secured Claims:**

1.01 **North Mill Credit Trust f/k/a EFS Credit Trust:** This Class consists of the



claim of North Mill Credit Trust f/k/a EFS Credit Trust (hereinafter “EFS”) in the approximate amount of \$41,067.62 and is impaired. The Claim of EFS is secured by a lien on a 2017 Rampant Low Boy 35-ton trailer, which is owned by the Debtor but used by Monster Concrete and Excavation in its operations. The Debtor proposes that this claim be paid by Monster Concrete and Excavation, pursuant to its plan, in monthly payments of \$779.71 per month for 60 months with interest at 5.25%, per annum until the debt is paid in full. EFS shall retain its lien on this collateral until the debt is paid in full.

- 1.02 **Internal Revenue Service:**<sup>1</sup> This Class consists of the Allowed Secured Claim of the IRS. The IRS has filed a secured claim in the approximate sum of \$467,808.65. The Debtor proposes that this claim be paid by Monster Concrete and Excavation, pursuant to its plan of reorganization. That plan proposes that MCE will pay, settle, and satisfy the Allowed Secured Portion of this claim over a one hundred twenty (120) month period with an interest rate of 4.00% in monthly installments of approximately \$4,736.33 or as otherwise ordered by this Court. The first monthly installment shall be due within 30 days from the final order confirming the Debtors Plan, and subsequent installments shall be due on the 1st day of each month thereafter until said debt has been paid in full. The Debtor reserves the right to prepay the portion of the IRS secured claim during the referenced payment period.

The IRS shall retain its Notices of Federal Tax Liens (“NFTLs”), which were filed prior to the Petition Date and shall not be required to release said NFTLs until after the entire amount of the IRS claim has been paid in full.

Assuming that the case of Monster Concrete and Excavation is substantively consolidated with the case of Monster Concrete the following additional secured claims would be satisfied as follows:

- 1.03 **Alabama Department of Revenue:** This Class consists of the Allowed Secured Claim of Alabama Department of Revenue (“ADOR”) in the approximate amount of \$7,519.00 and is impaired. ADOR is secured by a tax lien on Monster Concrete and Excavation’s equipment, inventory and accounts receivables pursuant to a tax lien. Debtor will pay, settle and satisfy this debt by making monthly payments to ADOR in the amount of \$166.43 per month for Forty-Eight months commencing on the Effective Date of the Plan and continuing each month thereafter until the Debt is paid in full. This claim includes interest at 3% per annum. This creditor will retain its lien upon this collateral until such time as the debt is paid in full.

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<sup>1</sup> Debtor’s classification of these secured tax claims is in accordance with the Bankruptcy Code. See e.g., *In re Tree of Life Church*, 522 B.R. 849, 861 (Bankr. D.S.C. 2015); *In re Greenwood Point, LP*, 445 B.R. 885, 905 (Bankr. S.D. Ind. 2011).

- 1.04 **Caterpillar Financial Services:** This Class consists of the Allowed Secured Claim of Caterpillar Financial Services in the approximate amount of \$30,054.34 and is impaired. The Claim of Caterpillar is secured by a lien on a 320CL Hydraulic Excavator & Bucket. On May 29, 2018 this Court approved payment of the adequate protection payments by the Debtor's to Caterpillar in the amount \$1,851.03 per month beginning in April, 2018 [Doc. 80]. This payment includes interest at the contract rate of 8.95 percent. Debtor will continue to pay this debt pursuant to the terms of this Court's prior order until the debt is paid in full. Debtor estimates that the payment period is approximately 16 months.
- 1.05 **Mack Financial Services:** This Class consists of the Allowed Secured Claim of Mack Financial Services in the approximate amount of \$18,414.55 and is impaired. The Claim of Mack is secured by a lien on a 2011 Mack Truck. The Debtor will pay, settle and satisfy this debt by making monthly payments to Mack in the amount of \$426.15 per month. This payment includes interest at the contract rate of 5.25 percent. Debtor will continue to pay This debt pursuant to the terms of This Court's prior order until the debt is paid in full. Debtor estimates that the payment period is approximately 16 months.
- 1.06 **Bravo Capital:** This Class consists of the Allowed Secured Claim of Bravo Capital Financial Services in the approximate amount of \$88,444.65 and is impaired. The Claim of Caterpillar is secured by a lien on a 2012 John Deer 605C and a 2005 Mack CV713 Truck. On April 26, 2018 this Court approved payment of the adequate protection payments by the Debtor to Bravo \$10,094.76 beginning in April, 2018 [Doc. 66]. This payment includes interest at the contract rate. Debtor will continue to pay This debt pursuant to the terms of This Court's prior order until the debt is paid in full. Debtor estimates that the payment period is approximately 10 months.

**2.0 Non priority Unsecured Claims:** This class consist of all allowed general unsecured claims which are impaired and include those of Monster Concrete and Excavation if the cases are substantively consolidated. The total amount of unsecured claims exceeds \$547,000. The claims are of every kind and nature including claims arising from personal guarantees, the rejection of executory contracts, unexpired lease claims, deficiencies on secured claims, contract damage claims or open account claims and damages arising from or related to any liquidated or contingent claim. It also includes any debt which is filed as a priority or secured claim but, which is allowed as an unsecured claim by the Bankruptcy Court. Holders of general unsecured claims without priority which are Allowed Claims as determined on or before the Effective Date of the Plan shall be paid on a pro rata distribution. Payment to the creditors in this class shall be made from Monster Concrete and Excavation's future net income. Debtor reasonably believes that creditors in this class will receive a distribution equal to no less than fifty percent (50%) of their Allowed Claim. Allowed Claims in this class shall receive monthly payments starting on the Effective Date of the Plan over a period of sixty consecutive months.

**3.0 Intercompany Claims:** Intercompany Claims exist to the extent that Monster Concrete and Excavation uses the equipment belonging to Debtor. There is no written lease agreement between the two companies; however, Monster Concrete and Excavation is paying the secured creditors of Debtor. Such Intercompany Claims shall be reinstated and distributions continued pursuant to Monster Concrete and Excavation's Plan.

**4.0 Equity Interest Holder:** This Class consists of the equity shareholder of the debtor which consists of Steve Williams, who owns One hundred percent (100%) of the issued and outstanding stock. Mr. Williams will not retain or receive any distribution on account of his ownership in the Debtor. Upon Substantive Consolidation Mr. Williams' equity ownership in the Debtor shall be retired and he shall cease to own such interest. Mr. Williams will retain his equity interest in Monster Concrete and Excavation, but he shall not, however, receive a distribution based on his Claim under the Plan until allowed administrative, priority and unsecured claimants have been paid or otherwise satisfied as provided for herein.

#### **TREATMENT OF UNCLASSIFIED ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

**Administrative Expense Claims:** All Administrative Claims shall be paid through the Chapter 11 case of Monster Concrete and Excavation, as follows:

- 1.01 Heard, Ary & Dauro, LLC:** This Administrative Expense Claim is unimpaired and shall be paid in full as of the Effective Date of the Plan unless otherwise agreed upon by the parties.
- 1.02 Davis, Redding & Associates, CPA.** The Debtor has also incurred accounting fees from Davis, Redding & Associates, LLC in the approximate amount of \$2,400 as of May 31, 2018.

**Priority claims:** Pre petition the Debtor owed the Alabama Department of Revenue the sum of \$1,000.00 for withholding taxes. It also owed the Internal revenue Service the sum of \$471,007.42 for taxes. These claims are entitled to priority under §507 (a)(8) of the Bankruptcy Code. The treatment and repayment of these claims as well as the priority claims of Monster Concrete and Excavation will be as follows:

- 2.1 Alabama Department of Revenue:** This Class consists of the Allowed Priority Claims of the Alabama Department of Revenue under §507(a)(8) of the Bankruptcy Code. Pre-petition the Debtor owed ADOR the sum of \$23,072.01 for withholding taxes. This amount shall be payable in sixty (60) monthly payments by the Debtor remitting to ADOR equal monthly payments in the sum of \$424.91 which payment includes interest at 4%. The first payment shall be due on the Effective Date of the Plan and subsequent payments shall be due on the 1st day of each monthly thereafter until said debt has been paid in full.

**2.2 Internal Revenue Service:** This Class consists of the Allowed Priority Claim of the Internal Revenue Service for federal withholding taxes. The Debtor estimates that this amount may be as high \$229,923.44. The Debtor would propose that in accordance with §1129(a)(9)(D), the total allowed portion of this claim that meets the definition contained in §507(a)(8) of the Bankruptcy Code shall be amortized over a period of sixty (60) months with an interest rate of 3.00%. Debtor shall remit sixty (60) monthly payments in the amount of \$575.02 per month. The Debtor reserves the right to prepay the portion of the IRS unsecured priority claim during the referenced payment period. During the pendency of the repayment period for the pre-petition tax debt owed to the IRS, in the event the Debtor fails to remit any monthly payment on the IRS secured and unsecured priority claim as each payment becomes due; or, timely file any and all post-petition federal income tax returns by the due date for each respective tax period including any extensions and pay the taxes due on the return; the automatic stay will be considered terminated and the IRS may proceed with its legal and/or administrative remedies to collect any and all sums due on its amended claim and any post-petition liability.

For the tax periods listed on the amended claim, the time periods found at 26 U.S.C. 6503(b) and 6503(h) are tolled during the term for repayment stated in this plan. For the tax periods listed on the claim filed by the IRS, the time periods found at 11 U.S.C. § 507(a)(8) are tolled during the term for repayment period stated in this plan.

### **THE CHAPTER 11 FILING AND POST-PETITION EVENTS**

On February 1, 2018, the Debtor filed a voluntary petition, List of Creditors Holding 20 Largest Unsecured Claims and Corporate Ownership Statement, and Matrix under Chapter 11. The Debtor filed amended schedules, Statement of Financial Affairs, and an updated Matrix. The Court scheduled May 7, 2018 as the bar date for all claimants to file proofs of claim, including governmental units and/or agencies.

Post-petition the Debtor's case has been jointly administered with the case of Monster Concrete and Excavation pursuant to the Court's order dated February 22, 2018 [Doc. 36].

Also post-petition, a motion for substantive consolidation has been filed by Debtor and Monster Concrete and Excavation. As part of the implementation of its Plan, the Debtor intends on substantively consolidating its claims and assets with those of Monster Concrete and Excavation as discussed in more detail below.

### **ANALYSIS OF TRANSFERS WHICH MAY BE AVOIDABLE**

Debtor's Statement of Financial Affairs, which has been previously filed with this Court shows no creditors to whom payments, greater than \$6,225.00 were made within ninety (90) days prior to filing bankruptcy.

### **EXECUTORY CONTRACTS AND LEASES**

Debtor is not aware of any additional executory contracts or unexpired leases to which it is a party. To the extent such exists it is to be rejected upon confirmation. All parties to any executory contract or lease rejected shall have thirty (30) days from the Confirmation Date in which to file a claim for damages, if any, resulting from such rejection or such claims will be disallowed and will not be eligible to participate in distributions under this Plan.

### **MEANS OF EXECUTION OF PLAN – SUBSTANTIVE CONSOLIDATION**

As part of the implementation of its Plan, the Debtor has proposed that its case be substantively consolidated with Monster Concrete and Excavation, Case No. 18-80279 upon confirmation of Debtor's Plan. Substantive consolidation involves the pooling of the assets and liabilities of two or more related entities; the liabilities of the entities involved are then satisfied from the common pool of assets created by consolidation. *Eastgroup Properties v. S. Motel Ass'n, Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991). Substantive Consolidation is appropriate where benefits of consolidation outweigh the harm it inflicts on objecting parties, if any. Substantive Consolidation is also appropriate where there is substantial identity between the entities to be consolidated and consolidation is necessary to avoid some harm or to realize some benefit.

In this case there are good reasons to combine these companies. All business currently being done by the two companies, is being done through Monster Concrete and Excavation. The majority of the income is generated utilizing assets belonging to Monster Concrete and the two companies share many of the same creditors. There would also be cost savings by avoiding duplication by consolidation and consolidation will recognize that which has been intended; that the two companies really are just one. Debtor incorporates the arguments contained in the Motion for Substantive Consolidation [18-80279; Doc 104] in further support of this consolidation.

Absent substantive consolidation the unsecured creditors of Debtor will be paid little if any portion of their claim. Moreover, the creditors of Monster Concrete and Excavation will not be prejudiced by substantive consolidation. In fact, they actually benefit by Monster Concrete and Excavation using equipment belonging to Debtor and thereby avoiding having to spend additional monies to purchase new equipment. These savings can then be used to as part of the plan payments to the creditors of both Monster Concrete and Monster Concrete and Excavation.

A further reason for allowing substantive consolidation of the two entities is because Monster Concrete and Excavation is likely the successor to Monster Concrete. Although there

are no actual merger or acquisition agreements formally merging the two entities, Alabama law recognizes that a successor entity may become liable for the debts of another if four factors are present. They are: 1) a basic continuity of the enterprise including, a retention of key personnel, assets, general business operations and the Sellers name; 2) The seller corporation ceased ordinary business operations, liquidated, and dissolved soon after distribution of consideration received from the buying corporation; 3) The purchasing corporation assumed those liabilities and obligations of the seller ordinarily necessary for the continuation of the normal business operations of the seller corporation; and 4) the purchasing corporation held itself out to the world as the effective continuation of the seller corporation. *Prattville Mem'l Chapel v. Parker*, 10 So. 3d 546, 556 (Ala. 2008).

All of these factors are present in this case to a certain degree. Certainly, there was a continuity of the enterprise with the retention of key personnel, business operations and location. Also, Debtor ceased operations and Monster Concrete and Excavation began paying the debts of Debtor when using its assets. Additionally, Monster Concrete and Excavation held itself out as the continuation of Debtor. Thus, there are grounds to find, separate and apart from the request for substantive consolidation, that Monster Concrete and Excavation is the mere continuation of Monster Concrete and therefore responsible for its debts.

The claims for both Monster Concrete and Monster Concrete and Excavation are attached as Exhibits B and C, respectively. In the event the cases are not consolidated then the claims would remain as shown on these Exhibits. It is likely that the claims in the Monster Concrete case would not receive any distribution as that case would likely be dismissed. Debtor would not have any means of reorganizing its debts since it is not operating. The dismissal of Debtor’s case, however, would expose Monster Concrete and Excavation to potential claims for successor liability and stay relief motions from those secured creditors for which Debtor is obligated to pay the debt but which Monster Concrete and Excavation is using the equipment.

Because of the exposure of these potential claims, neither Debtor nor Monster Concrete and Excavation believes that its creditors are adversely affected by substantive consolidation. The chart below explains what happens to Allowed Claims in the event the two cases are consolidated.

Alabama Department of Revenue [MCE] <sup>2</sup>	\$7,519.85. This is a secured debt owed by MCE and will be paid per MCE plan.
Mack Financial (MCE)	\$18,414.55. This is a secured debt owed by MCE and will be paid per MCE plan.
Alabama Department of Labor (MCE)	\$3,000.79. This is a secured debt owed by MCE and will be paid per MCE plan.
Caterpillar Financial Services [MCE] & [MC]	\$30,054.34. This is a secured joint debt owed by MCE and MC will be paid per MCE plan.

<sup>2</sup> “MCE” refers to Monster Concrete and Excavation. “MC” refers to Monster Concrete.

Bravo Capital [MC] & [MCE]	\$88,444.65. This is a secured joint debt owed by MCE and MC will be paid per MCE plan.
EFS Trust [MC]	\$40,402.58. This is a debt owed by MC but secured by equipment being used by MCE in its operations. MCE will assume this debt as it needs the equipment.
Internal Revenue Service [MC]	\$467,808.65. This debt is owed by MC but is secured by a tax lien on the assets of MC which are being used by MCE. Whether the debt is secured or a priority unsecured debt it is proposed to be paid by MCE in its plan.
Gibraltar Capital	69,058. This is a debt owed by MC which was not properly collateralized and is treated as an unsecured claim in MCE.
MC Allowed Unsecured Claims	Allowed unsecured claims of MC would be paid under MCE plan – which currently projects 50% return which is significantly more than if the two cases are not consolidated.
MCE Allowed Unsecured Claims	Allowed unsecured claims of MCE would be paid under MCE plan

Monster Concrete and Excavation, by continuing to operate its business, has increased the likelihood of the success of the Plan. Monster Concrete and Excavation will implement the terms of its Plan as well as Debtor’s Plan by making payments to creditors from Monster Concrete and Excavation’s post-petition income. By restructuring its debt, Monster Concrete and Excavation has increased the likelihood of the success of the Plans. Debtor shall also execute such additional documents as are necessary to comply with the terms of the Plan.

**RETENTION, ENFORCEMENT, AND WAIVER OF CLAIMS**

Pursuant to § 1123(b) of the Code, the Debtor shall retain and may enforce any and all claims of the Debtor, except claims waived, relinquished, or released in accordance with this plan.

Notwithstanding the prior paragraph, no party in interest except the Debtor shall maintain or commence an action to recover a preference as defined in § 547(b) of the Code after Confirmation

**FEDERAL INCOME TAX CONSEQUENCES**

The tax consequences of the Plan to each party-in-interest will depend on the precise financial circumstances of that party. The Debtor makes no representation with respect to the effects of the taxation (State or Federal) on the creditors with respect to the treatment of their claims under the plan, and no such representations are authorized. Any tax information contained herein is for informational purposes only. Parties-in-interest are urged to seek the advice of their own professional advisors should they have any questions with respect to any taxation issues.

The precise tax consequences to the Debtor resulting from its having filed Chapter 11 are

not yet known. This may include, for example, income from discharge of indebtedness. The treatment by the Debtor of all allowed pre-petition tax claims shall be as provided for in Class Two, described herein. All taxes generated post-petition shall be paid by the reorganized Debtor as part of its ordinary course of business. As previously noted, the Debtor is current on all post-petition tax payments.

**POST CONFIRMATION LITIGATION AND OTHER MATTERS**

Debtor does not anticipate being involved in any post confirmation litigation matters.

Respectfully submitted on this 5<sup>th</sup> day of October, 2018.

By: /s/ Steve Williams  
Monster Concrete, LLC

/s/ Kevin D. Heard  
Kevin D. Heard

/s/ Angela S. Ary  
Angela S. Ary

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of October, 2018, I served a copy of the foregoing **Debtor's Third Amended Disclosure Statement Dated October 5, 2018**, on the parties listed below and on the attached matrix by depositing the same in the United States Mail, postage prepaid and properly addressed, via electronic mail at the e-mail address below, unless the party being served is a registered participant in the CM/ECF System for the United States Bankruptcy Court for the Northern District of Alabama, service has been made by a "Notice of Electronic Filing" pursuant to FRBP 9036 in accordance with subparagraph II.B.4. of the Court's Administrative Procedures as indicated below:

**Notice will be electronically mailed to:**

Richard Blythe

[Richard\\_Blythe@alnba.uscourts.gov](mailto:Richard_Blythe@alnba.uscourts.gov); [courtmailann@alnba.uscourts.gov](mailto:courtmailann@alnba.uscourts.gov)

Richard E. O'Neal on behalf of United States of America Department of Treasury - Internal Revenue Service [USAALN.BANKRUPTCY@usdoj.gov](mailto:USAALN.BANKRUPTCY@usdoj.gov)

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**Notice will not be electronically mailed to:**

**All parties on the attached matrix were served via U.S. Mail.**

*/s/ Kevin D. Heard*

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Kevin D. Heard