

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

IN RE: EL PINO TRUCKING, INC.  
Debtor-in-Possession

CASE NO. 5:18-bk-70932  
CHAPTER 11

**COMBINED DISCLOSURE STATEMENT  
& PLAN OF REORGANIZATION  
OF  
EL PINO TRUCKING, INC.**

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**PART I**

**Summary Classification of Claims & Length of Plan**

Nine (9) classes of claims are defined in this Plan of Reorganization, enumerated as follows:

- CLASS 1.** Administrative Expense Claims
- CLASS 2.** Secured Claim by Centennial Bank
- CLASS 3.** Secured Claim by Ascentium Capital
- CLASS 4.** Secured Claim by Amur Finance
- CLASS 5.** Secured Claim of Paccar Financial
- CLASS 6.** Secured Claim of TCF
- CLASS 7.** Secured Claim of Volvo
- CLASS 8.** Secured Claim of Wells Fargo
- CLASS 9.** Allowed General Unsecured Claims

The Effective Date of this Plan shall be the first business day of the first full month after an order confirming the Plan is entered.

The length of the Plan shall be five (5) years ending on or about July 31, 2023 and shall be known as the reorganization period. It is anticipated and proposed in this Plan that all unsecured creditors shall be paid in full under the Plan of Reorganization.

The debtor-in-possession is referred to herein as “El Pino”, “Debtor-in-Possession”, or “Debtor” and

such reference also incorporates the Debtor's successors and assigns.

The dates referred to in this plan are based upon the Gregorian calendar wherein the calendar year commences on the 1st day of January and ends on December 31st. The calendar year is divided into four quarters with the first, second and third months of the first full quarter being January, February and March respectively; with the first, second and third months of the second quarter being April, May and June respectively; with the first, second and third months of the third quarter being July, August and September respectively; and the first, second and third months of the fourth quarter being October, November and December respectively.

This Plan of Reorganization is generally referred to herein as "Plan."

The Debtor other than as set forth in this Disclosure Statement and Plan of Reorganization authorizes no representations concerning the Debtor, its assets, liabilities and net worth, if any, or prospects for future business operations or value of their property. Any representations or inducements made to secure your acceptance of the Plan that are other than as contained in this Disclosure Statement should not be relied upon by you in arriving at your decision.

The information contained herein has not been subject to a certified audit by the Debtors' certified public accountants, except as specifically noted. However, Debtor has made a review of its books, records and accounts maintained and prepared pre-petition. For the foregoing reasons, as well as the complexity of the financial affairs of the Debtor, the Debtor is unable to warrant or to represent unqualifiedly and absolutely that the information contained herein is without any inaccuracy, although great effort has been made to be accurate.

## **PART II**

### **Assignment & Treatment of Classes of Claims**

The Debtor proposes the following classification and treatment of claims:

#### **CLASS 1. ADMINISTRATIVE EXPENSE CLAIMS (this is an unimpaired class)**

Each holder of an allowed Administrative Expense Claim shall be paid: (i) the full amount of such Allowed Administrative Expense Claim, in cash, without interest, on the later of (a) the Effective date or as soon thereafter as is practicable, or (b) the date on which such Allowed Administrative Expense Claim becomes due and payable pursuant to the terms thereof, the agreement upon which such Allowed Administrative Expense Claim is based, or any applicable Final Order; or (ii) in such amount, or on such other date and upon such other terms as may be contained in a Final Order or as agreed upon between the holder of such allowed Administrative Expense Claim and the Debtor. Post-petition expenses incurred in the ordinary course of business are current and shall continue to be paid, post confirmation, pursuant to their credit terms. Post-petition taxes will be treated according to 503 (b) (1) (B).

**CLASS 2. SECURED CLAIMS OF CENTENNIAL BANK  
(This is an impaired class)**

Centennial Bank also holds a secured interest in a 2016 Peterbilt Model 579 which the Debtor intends to pay the amount owed in full at 6% interest over the first four years of the plan period resulting in payments of \$2,419.28.

Centennial Bank also holds a secured interest in a 2016 Peterbilt 389 which the Debtor intends to pay the amount owed in full at 6% interest over the first four years of the plan period resulting in payments of \$2362.56.

Centennial Bank also holds a secured interest in a Utility Trailer which the Debtor intends to pay the amount owed in full at contract terms without alteration resulting in monthly payments of \$819.39.

**CLASS 3. SECURED CLAIM BY ASCENTIUM CAPITAL  
(This is an impaired class)**

Ascentium Capital is a secured creditor holding a secured interest in a 2015 Utility Trailer which the Debtor has claimed in its schedules as having a value of \$25,000.00. At the time of filing the Debtor believes that \$25,417.20 was owed against this property. The Debtor intends to pay the value of this 2015 Utility Trailer at 6.0% interest over the first four years of the plan period resulting in monthly payments of 587.13. Ascentium Capital also has a secured interest in a 2018 Timpote Trailer which the Debtor is surrendering in full satisfaction of the debt owed against it.

**CLASS 4. SECURED CLAIM BY AMUR FINANCE  
(This is an impaired class)**

Amur Equipment Finance is a secured creditor holding a secured interest in a 2017 Utility Trailer which the Debtor has claimed in its schedules as having a value of \$54,000. At the time of filing, the Debtor believes that \$63,000 was owed against the property. The Debtor intends to pay the value of this 2017 Utility Trailer at 6% interest over the first four years of the plan period resulting in monthly payments of \$1,268.20.

**CLASS 5. SECURED CLAIM BY PACCAR FINANCIAL  
(This is an impaired class)**

Paccar Financial is a secured creditor holding a secured interest in a 2016 Peterbilt 389 which the Debtor has claimed in its schedules as having a value of \$80,000. At the time of filing, the Debtor believes that \$88,195.75 was owed against the property. The Debtor intends to pay the value of this 2016 Peterbilt 389 at 6% interest over the first four years of the plan period resulting in monthly payments of \$1,878.81.

**CLASS 6. SECURED CLAIM BY TCF  
(This is an impaired class)**

TCF is a secured creditor holding a secured interest in a 2017 Utility Trailer which the Debtor has claimed as having a value of \$54,000.00. At the time of filing the Debtor believes that \$57,764.67 was owed against the property. The Debtor intends to pay the value of this 2017 Utility Trailer at the contract rate of 6.85% over the first four years of the plan period resulting in monthly payments of \$1,289.35.

**CLASS 7 SECURED CLAIM BY VOLVO.  
(This is an impaired class)**

Debtor is surrendering the 2015 Volvo 780 Truck to Volvo in full satisfaction of the debt owed against the Truck.

**CLASS 8. SECURED CLAIM BY WELLS FARGO  
(This is an impaired class)**

Debtor is surrendering the 2015 Peterbilt 579 Truck as well as the 2016 Peterbilt 579 in full satisfaction of the debt owed against the Trucks.

**CLASS 9. ALLOWED UNSECURED CLAIMS  
(This class is impaired)**

The Debtors have unsecured debt as reflected in schedule F of their bankruptcy schedules in the amount of \$47,291.54.

Beginning in the 49<sup>th</sup> month of the plan period, the debtor will pay \$3,000 per month to all valid unsecured claims on a pro-rata basis resulting in a distribution to this class of \$36,000. Any remaining balance owed at the end of the 5 year plan period will be discharged.

**PART III**

**Classes of Claims Impaired by the Plan**

Classes 2, 3, 4, 5, 6, 7, 8, and 9 are impaired by this Plan.

**PART IV**

**Treatment of Pre-Petition Tax Claims of Governmental Authorities**

The Debtor will pay these claims as designated above.

**PART V**

**Treatment of Unimpaired Claims**

All classes in this plan which are unimpaired shall be treated as outlined in Part II above.

## **PART VI**

### **Treatment of Impaired Claims**

The classes of impaired claims shall be treated pursuant to the provisions of this Plan and as outlined in Part II above.

## **PART VII**

### **Assumption or Rejection of Executory Contracts and Unexpired Leases**

There are no leases for the Debtor to assume or reject.

## **PART VIII**

### **Timing of Distributions**

Payments and distributions in respect of Allowed Claims under the Plan shall be made as mandated under the Plan. On the Effective date, the Debtor will (i) surrender to Secured Creditors any property determined to be unnecessary for reorganization, (ii) pay in full, all allowed Administrative Expense Claims. Distributions to allowed General Unsecured Claims will be made as designated in Part II above and once (i) all disputed claims in each respective class become either allowed claims or (ii) are disallowed by final order.

## **PART IX**

### **Unclaimed Funds and Returned Distributions**

Any distribution to the holder of an allowed General Unsecured Claim that is unclaimed shall revert after 45 days from the date of distribution to the Debtor. A distribution of funds is unclaimed if, without limitation, the holder of a claim entitled thereto does not cash a check or return a check or if the check mailed to a holder at the address set forth in the Debtor's schedules or set forth in a proof of claim filed by such holder is returned by the United States Postal Service or any other country's postal service as undeliverable.

Unless the holder of a claim advises the Debtor or its attorney in writing of a change of address, all distributions or notices shall be sent to the holder at his address as stated in the Debtors' schedules or as stated in a properly filed proof of claim or to such creditor's attorney of record in the chapter 11 case. The Debtor shall have no obligation to locate the holder of a claim whose distribution or notice is properly mailed but nevertheless returned.

**PART X**

**Claims Bar Date**

No claims other than those contemplated to be filed pursuant to this Plan shall be accepted after the claims bar date. Any claim filed after such time submitted by any creditor will be considered untimely and shall be disallowed. An order has been entered establishing a claims bar date of June 8, 2018.

**PART XI**

**Confirmation Standard**

The Bankruptcy Court shall confirm a Plan of Reorganization only if all requirements for confirmation set forth at 11 USC Section 1129 are met. Creditors are urged to review the stated provisions and Disclosures provided for in this Plan.

**PART XII**

**Confirmation Hearing, Objections to the Disclosure Statement  
and/or Plan of Reorganization and Claims Bar Date**

The Court will issue a separate Order which sets these dates. A copy of that Order is being sent along with this Combined Disclosure Statement and Plan of Reorganization and ballot.

Any Objection to this Combined Disclosure Statement and Plan of Reorganization shall be made in writing and filed with the following persons or offices:

1. Clerk, United States Bankruptcy Court, 35 E. Mountain St, Room 316, Fayetteville, Ar 72701.
2. Donald A. Brady, 3398 E. Huntsville Rd, Fayetteville, Arkansas 72701; and
3. Office of the United States Trustee, Attn: Patti Stanley, 200 W. Capitol, Suite 1200, Little Rock, AR 72201.

**PART XIII**

**Debtor to be Treated as a Small Business**

The Debtor is to be treated as a Small Business as defined by 11 USC Section 101(51C) and (51D).

**PART XIV**

**Modifications of the Plan of Reorganization**

The Debtor may modify a Plan of Reorganization subject to the restrictions set forth in 11 USC 1127.

## **PART XV**

### **Means for Executing the Plan**

The Debtor is surrendering 3 Trucks and reducing the amount of Trucks in the business from 6 to 3. With the restructuring as set forth in this plan, the Debtor should have sufficient funds to pay the claims as set out in this Plan. The financial hardship was caused by having debt obligations on 6 trucks but consistently only having 3 Trucks in operation. The revenues generated by the 3 retained trucks will be sufficient to fund the Debtor's Plan.

## **PART XVI**

### **History**

The Debtor is a trucking company which was attempting to run 6 trucks full-time. Because three of the Debtor's drivers were disqualified, the Debtor needed to reduce the number of trucks in the debtor's fleet from 6 to 3. The reduction of the fleet reduces over \$5,000 per month in expenses. Because the Debtor was essentially only running 3 trucks, the revenues remain consistent post-filing.

## **PART XVII**

### **Financial Information**

#### **A. Assets.**

The principal tangible assets of the Debtor are found in Debtor's *Schedule B* of the Debtor's Petition. The Debtor owns trucks and trailers which is necessary for the Debtor's operations. The Debtor shows in its schedules \$679,000 in assets and \$804,461.47 in liabilities. These numbers included property which the debtor is surrendering. After surrendering the assets itemized in this Plan of Reorganization, the Debtor will retain approximately \$384,000 in assets along with 437,989.62 of liabilities.

#### **B. Liabilities**

As shown above the debtor will retain property with approximately \$437,989.62 worth of liabilities. The Debtor is cramming some of the debt down to value which would reduce the debt obligation. The Debtor believes that he can make the payments outlined in this Plan. Additionally, there is approximately \$48,000 in unsecured debt which the Debtor expects to pay nearly 75% of this debt in the final year of Plan Reorganization.

#### **C. Projected and Future Earnings.**

It is always difficult to project future earnings when the business is dependent upon certain contracts. Based upon the history of the company, the Debtor expects earnings to remain consistent.

For the last couple of years, the Debtor has averaged around \$1,500,000 in gross revenues per year.

**D. Liquidation Analysis.**

As stated above, the Debtor has \$679,000 in assets and \$804,461.47 in liabilities. The Business assets are encumbered and if the Debtor was placed into a liquidation, the unsecured creditors would not receive any distribution. The Debtor's Plan of Reorganization proposes to pay \$36,000 to its unsecured creditors which demonstrate good faith on the Debtor's part in his plan of reorganization. The General Unsecured Creditors are substantially better off through this chapter 11 plan of reorganization.

**PART XVIII**

**Management of Business**

Adrian Montoya is the sole owner of the Debtor and as such will continue to manage the financial affairs during this bankruptcy.

**PART XIX**

**Vesting of Property and Discharge of Debts**

The Debtor is seeking a discharge pursuant to 11 USC Section 1141. The Debtor is entitled to a discharge because this is a Plan of Reorganization, not liquidation, and the Debtors intend to engage in business after the consummation of the Plan.

Except to the extent provided for in this Plan or in the confirmation Order, upon the effective date, the Debtor shall not be discharged and released from any and all debts and claims arising or incurred prior to the Effective Date unless and until the Debtors complete all payments pursuant to this Plan or as otherwise provided for in 11 USC section 1141.

On the Effective Date of the Plan, all property of the estate, including all causes of action for avoidance of transfers, shall vest in the Debtors and shall be beheld and owned by it free and clear of all liens, claims and interests of all creditors except to the extent provided for in this Plan.

**PART XX**

**Request for Confirmation**

Debtor requests confirmation of the Plan under Section 1129(b) of the Bankruptcy Code.

It is the Debtor's intent that the confirmation order shall:

(1) be entered by the Court in form and substance consistent with the Plan and shall not have



been reversed, stayed, modified or amended in any material respects prior to the Effective Date;

(2) expressly approve the terms and provisions of the Plan pursuant to 11 USC §1129;

(3) provide for the rejection on the Effective Date of all executory contracts and leases not included in the Estate Assets and otherwise specifically assumed prior to the Confirmation Date;

(4) provide that all sales and transfers of the Estate Assets contemplated by, or provided for, in the Plan shall be free and clear of all transfer and stamp taxes in accordance with section 11 USC §1146(c);

(5) provide for the treatment of the Liens and Claims of holders of Allowed Secured Claims and Liens;

(6) authorize and direct the Debtor to perform its obligations under the Plan and to take all actions and execute all documents and instruments reasonably necessary to consummate the transactions contemplated thereby in accordance with the terms thereof;

(7) provide that, upon the Effective Date, the Debtor shall be vested with the rights and powers granted to a trustee under section 11 USC §1107(a) with respect to the allowance, treatment or avoidance of Liens or Claims to be assumed by the Reorganizing Debtor;

(8) provide that the Estate Assets shall be and shall remain free and clear of the Liens, Claims, and Equity Interests of any Entity except for those of the respective Creditors and post-confirmation U.S. Trustee fees; and no Entity shall be permitted to execute against or receive Distributions from the Debtor except in accordance with the terms of the Confirmation Order and of the Plan;

(9) provide that the entry of the Confirmation Order shall not have any *res judicata* or other preclusive effect with respect to any claims of the Debtor against third parties that are not specifically and expressly released by the terms of the Plan or Confirmation Order and that the entry of the Confirmation Order shall not be deemed a bar to asserting such claims.

(10) entitle the Debtor to seek such orders, judgments, injunctions and rulings as each deems necessary to carry out and further the intentions and purposes and to give full effect to the provisions of the Plan.

## **PART XXI**

### **Jurisdiction**

The assets and property of the Debtor shall remain subject to the jurisdiction of the Bankruptcy court until the Effective Date. Subsequent to the Effective Date, the Bankruptcy Court shall retain jurisdiction over matters pending on the Effective Date or as set forth in the Confirmation Order. The Bankruptcy Court shall retain jurisdiction to resolve disputes arising under the Plan for

which relief may be granted under the Bankruptcy Code and Bankruptcy Rules.

Until the effective date and until the case is closed, the court shall retain jurisdiction of the proceeding for the purposes set forth in 11 USC Section 1127 (b) and to: (a) classify claims of creditors and determine claims and objections thereto as may be filed; (b) the determination of all questions, causes of actions, controversies, disputes, or conflicts between the Debtors, the United States Trustee, any creditors, and any other parties, whether or not subject to a pending motion or action as of the confirmation date as it relates to plan interpretation or administration; (c) the correction of any defect, the curing of any omission, or the reconciliation of any inconsistencies in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and intent of this Plan, either on Notice or as the Bankruptcy Court shall determine to be appropriate; (d) the modification of this Plan after confirmation pursuant to the Bankruptcy Rules and the Bankruptcy Code; (e) the enforcement and interpretation of the terms and provisions of this Plan; (f) the time period fixed for any act or thing under this Plan, on notice or as the Bankruptcy Court may deem appropriate; (g) the entry of any order or injunction necessary to enforce the right, title, interest and power of the Debtor, and to impose such limitations, restrictions, terms and conditions on such right, title, interest and power as the Bankruptcy court may deem necessary; and (h) the entry of an order closing the Chapter 11 Case.

## **PART XXII**

### **United States Trustee's Fees**

The Debtor shall comply with 28 USC section 190(a) (6) which provides for the payment of post confirmation quarterly fees until the case is closed, converted, or dismissed, and the Debtors shall provide post confirmation reporting to the U. S. Trustee's Office until the case is closed, converted, or dismissed pursuant to the regulations of that office.

## **PART XXIII**

### **Definitions and Required Terms**

Words and phrases used in this Plan of Reorganization shall be given their ordinary and concise meaning in American English within the context of the bankruptcy proceeding.

### **Terms Required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the United States Bankruptcy Courts for the Eastern and Western Districts of Arkansas**

#### **A. Preface**

Approval by the United States Bankruptcy Court of this or any subsequent Disclosure Statement does **NOT** approve or confirm the Debtors' proposed Plan of reorganization nor is it a ruling on the merits of the Debtors' proposed Plan of reorganization.

The dates and times of hearings and other court proceedings regarding this Disclosure Statement are not in the province of the Debtors' power to set, change or cancel. The United States Bankruptcy Court and the United States Bankruptcy Clerk shall set the Court's calendar and any hearings mentioned in this appendix or in the foregoing Disclosure Statement and shall be set by subsequent notice.

**B. Notice of Intent to "Cramdown"**

The Debtors' Plan of Reorganization may propose a "cramdown" which means that the Debtors shall seek the approval and confirmation of its Plan of Reorganization notwithstanding the objection of the Plan by one or more classes of impaired creditors or equity security holders.

The Bankruptcy Court may approve and confirm a Plan of reorganization pursuant to certain provisions of the United States Bankruptcy Code if all of the following requirements are met: (1) the Plan does not unfairly discriminate between classes of creditors and (2) the treatment of each class of non-accepting impaired creditors is fair and equitable.

For a definition of impairment, see subsection "C" below.

**C. Information on Impairment of Claims & Classes**

The Debtors have classified the claims of creditors into several classes and subclasses that are designated by number: Class 1, Class 2, Class 3-A, etc. The foregoing Disclosure Statement and the proposed Plan more fully set for what class a particular creditor's claim resides in.

Your claim and class may be impaired. The word "impaired" has a particular meaning in bankruptcy. An "impaired claim" is a claim in which your legal, equitable or contractual rights are altered in some way. An example of such an alteration is the Debtors' Plan of Reorganization proposing a different interest rate or maturity date for a loan. Another example of impairment is that the Debtor has not paid you its obligations after filing bankruptcy after you have accelerated payments. The examples given are for illustration; other impairments are possible.

Whether or not your claim and class is impaired does not affect your voting rights for approval or rejection of the Plan. All creditors may vote for approval or rejection of the Plan regardless of whether or not your claim is impaired.

**D. Voting and Confirmation Requirements & Filing of Claims**

Creditors shall be solicited for approval of the Plan of Reorganization contemporaneously with the approval of this Disclosure Statement or a Disclosure Statement subsequently approved by the Court. Sent along with this Plan was a ballot in which the creditors may vote to accept or reject their treatment in the proposed Plan of reorganization and/or object to the confirmation of the proposed Plan of reorganization.

The ballot accepting or rejecting the Plan must be filed prior to the aforementioned deadline fixed by the Court. All voting for acceptance or rejection of the Plan is by class of creditors. Acceptance of a Plan by a class of creditors occurs when the Plan is accepted by creditors holding at least two-third (2/3) in dollar

amount and more than one-half (1/2) in number of the allowed claims in the class that actually vote on the Plan.

The period of time for filing of claims commenced with the case on April 6, 2018 and as of the date of filing this Disclosure Statement, that period remains open. The Bankruptcy Court has set a claims bar date of June 8, 2018.

**E. Obligations to the United States Trustee**

If the Debtors' Plan of Reorganization is approved and confirmed, during the course of the reorganization the Debtors must pay a quarterly fee to the United States Trustee.

Respectfully submitted this 14th day of May 2018.

By: /s/Adrian Montoya  
Adrian Montoya, agent for Debtor

**CERTIFICATE OF SERVICE**

On this 14th day of May 2018, I hereby certify that a copy of the foregoing Disclosure and Plan were sent out to all creditors listed in the Debtor's Petitions and Schedules including the top twenty unsecured creditors via the United States Mails, postage prepaid.

/s/ Adrian Montoya  
Adrian Montoya