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11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:	In Chapter 11 Proceedings
14 ROGER LEE HAYES and SHERRY KAY 15 HAYES,	Case No.: 2:15-bk-15409-BMW
16 Debtors.	FIRST AMENDED DISCLOSURE 17 STATEMENT

18 **NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE
19 AUTHORIZED BY THE DEBTORS OTHER THAN THOSE STATED HEREIN. YOU
20 SHOULD NOT RELY ON ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING
21 THE PLAN OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.**

22 **AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED IN THIS
23 DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTORS CANNOT WARRANT OR
24 REPRESENT THAT THE INFORMATION IS WITHOUT ANY ERROR. HOWEVER, THE
25 INFORMATION IS ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE AND
26 BELIEF.**

27 I. INTRODUCTION TO DISCLOSURE STATEMENT

28 1.1 Purpose of Disclosure Statement.

This First Amended Disclosure Statement (“Disclosure Statement”) is submitted by Roger L.
Hayes and Sherry K. Hayes, debtors and debtor-in-possession (the “Debtors”), pursuant to 11 U.S.C. §
1125. The purpose of this Disclosure Statement is to provide the holders of claims against the Debtors

1 with adequate information about the Debtors and the Plan of Reorganization (the “Plan”) to make an
2 informed judgment about the merits of approving the Plan. A copy of the Plan is attached hereto as
3 Exhibit “A” and is on file with the Court. As a Creditor, your acceptance of the Plan is important.
4 Acceptance of the Plan by a Class of Creditors requires a vote by at least two-thirds in claim amount
5 and more than fifty percent in number of the allowed claims in the class that actually cast votes.
6 Failure to vote on the Plan does not count as either an acceptance or a rejection of the Plan.
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8 1.2 The Debtors’ Plan.

9 **THE DEBTORS’ PLAN ACCOMPANIES THIS DISCLOSURE STATEMENT AS**
10 **EXHIBIT “A.” THE READER IS URGED TO REVIEW THE DEBTORS’ PLAN**
11 **CAREFULLY IN CONJUNCTION WITH THIS DISCLOSURE STATEMENT. IF THERE IS**
12 **ANY CONFLICT BETWEEN THE PROVISIONS OF THIS DISCLOSURE STATEMENT**
13 **AND THOSE OF THE DEBTORS’ PLAN, THE PROVISIONS OF THE PLAN SHALL**
14 **CONTROL.**
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16 1.3 Voting Process and Deadline.

17 A ballot accompanies this Disclosure Statement for use in voting on the Debtors’ Plan. **To**
18 **vote to accept or to reject the Plan, creditors and interest holders of the Debtor in any of the**
19 **impaired classes should indicate their acceptance or rejection of the Plan and otherwise complete**
20 **the Ballot which pertains to the Plan.** See the “Summary of Plan” contained herein and the
21 Classification and Treatment of Claims and Interests contained in the copy of the Plan attached hereto
22 to determine whether you are a member of an impaired class. **Any creditor or equity holder holding**
23 **claims in more than one impaired class must file separate Ballots for each such class.** Additional
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1 Ballots may be obtained by written request to the Debtors' attorney at the following address: Davis
2 Miles McGuire Gardner, PLLC, 40 E. Rio Salado Parkway, Suite 425, Tempe, AZ 85281.

3 You are urged to fill in, date, sign, and promptly process your Ballot or Ballots. **Please be sure**
4 **to properly complete the form and to legibly identify the name of the claimant or interest holder.**

5
6 The holders of claims and interests may vote on the Plan by filling out and filing the accompanying
7 Ballot for Accepting or Rejecting the Debtors' Plan with:

8 Clerk of the U.S. Bankruptcy Court
9 230 N. First Ave, Suite 101
10 Phoenix, AZ 85003

11 with a copy mailed to:

12 Davis Miles McGuire Gardner, PLLC
13 Attn: M. Preston Gardner
14 40 E. Rio Salado, Parkway, Suite 425
15 Tempe, AZ 85281

16 **SIGNED AND COMPLETED BALLOTS MUST BE RECEIVED AND FILED, NOT**
17 **MERELY MAILED, ON OR BEFORE 4:00 P.M. ON _____.** SINCE MAIL
18 DELAYS MAY OCCUR, IT IS IMPORTANT THAT THE BALLOT OR BALLOTS BE MAILED
19 OR DELIVERED WELL IN ADVANCE OF THE DATE SPECIFIED. ANY BALLOTS
20 RECEIVED OR FILED AFTER THAT DATE MAY BE EXCLUDED FROM THE
21 CALCULATION TO DETERMINE WHETHER THE CREDITORS AND INTEREST HOLDERS
22 OF A PARTICULAR CLASS HAVE VOTED TO ACCEPT OR REJECT THE DEBTORS' PLAN.

23 1.4 Importance of Your Vote.

24 As a creditor or interest holder your vote is important. The Plan can be confirmed by the Court
25 if it is accepted by the holders of *two-thirds in amount* and more than *one-half in number* of claims in
26 each impaired class of claims voting on the Plan; and if it is accepted by the holders of two-thirds in
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1 amount of interests in each impaired class of equity interests voting on the Plan. In the event the
2 requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds
3 that it accords fair and equitable treatment to the class or classes rejecting it.

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5 1.5 Confirmation Process.

6 After the votes are tallied, the Court will hold a hearing on the confirmation of the Plan and
7 may enter a Confirmation Order if it finds that the requirements for confirmation have been met.
8 Confirmation of the Plan means that the Court has approved the Plan. For the Plan to be confirmed,
9 votes by each impaired Class representing at least two-thirds in amount of the allowed Claims voting
10 in each Class and greater than one-half in number of individual creditors for such class (of those
11 actually casting votes) must be submitted in favor of acceptance of the proponent's Plan.
12

13 If the required acceptance of impaired classes of claims or interests is not obtained, §
14 1129(b)(1) of the Bankruptcy Code nevertheless permits the Bankruptcy Court to confirm the Plan
15 upon request of the Debtor, if the Court finds that the Plan does not discriminate unfairly against and
16 accords fair and equitable treatment to the impaired class or classes rejecting it and that the Plan
17 otherwise meets the requirements for confirmation including satisfying a Chapter 7 Liquidation
18 analysis (discussed more fully below). At the hearing on confirmation of the Plan, the Bankruptcy
19 Court will hear any timely filed objections from a party in interest to confirmation of the Plan.
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21 1.6 Confirmation Hearing.

22 **The Bankruptcy Court has set _____, 2016, at ____ o'clock ____m.**
23 **for a hearing on confirmation of the Debtors' Plan.**
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1.7 Binding Effect of Plan.

When confirmed by the Bankruptcy Court, this Plan will bind all holders of Claims or equity interests in the Debtors, whether or not they are entitled to vote, or did vote, on the Plan, and whether or not they received or retained any distributions of property under the Plan.

II. DEFINITIONS

The Definitions set forth in Article I of the Plan apply in this Disclosure Statement, except to the extent other definitions are set forth in this Disclosure Statement.

III. HISTORY AND EVENTS LEADING TO THE CHAPTER 11 FILING

3.1 Events Precipitating this Case.

Debtors commenced this case because they were substantially underwater on an empty lot on which they had once planned to build their dream home. When the Debtors financed the purchase of the empty lot they granted a security interest in both the lot and their principal residence. The Debtors sold the empty lot prior to the Petition Date and the lender pursued the Debtors for the deficiency balance following the short sale. To avoid foreclosure of their residence and reorganize their other debts, the Debtors decided to file this Chapter 11 case.

3.2 Administrative Proceedings.

Debtors filed their Chapter 11 petition on December 4, 2015. A first meeting of creditors was held on January 5, 2016. Since the commencement of their case, the Debtors have focused on restructuring their secured debt obligations under the Plan.

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1 3.3 Retention of Professionals.

2 On December 9, 2015, the Debtors applied to the Court for approval of the employment of
3 Davis Miles McGuire Gardner, PLLC (the “Firm”) as counsel in this bankruptcy case. The Court
4 signed an Order approving the retention of the Firm on December 10, 2015.
5

6 3.4 Motion to Value Real Property.

7 On January 28, 2016, the Debtors filed a Motion to Value Real Property and to Avoid Junior
8 Liens with respect to their residence. The motion sought to avoid wholly unsecured second and
9 third mortgage liens held by Wells Fargo Bank, N.A. and BMO Harris Bank, N.A., respectively. On
10 February 16, 2016, Wells Fargo filed an Objection to the Motion to Value. On March 9, 2016, the
11 Debtors’ filed an Amended Motion to Value, which was based on an updated valuation of the
12 residence and sought to avoid only the third mortgage lien of BMO Harris Bank. On April 7, 2016,
13 the Court entered an Order avoiding the third mortgage lien of BMO Harris Bank.
14

15 3.5 Possibility of Avoidance Actions and Non-Bankruptcy Litigation.

16 Debtors are not aware of any avoidance actions regarding pre-petition transfers or any non-
17 bankruptcy litigation they could pursue. As these claims do not exist, there is no projected value or
18 likelihood of success regarding avoidance of pre-petition transfers or non-bankruptcy litigation.
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20 IV. FINANCIAL INFORMATION

21 4.1 Income.

22 The Debtors rely on both of their earnings from employment for their income. Mr. Hayes is a
23 senior manager with Honeywell International, and Mrs. Hayes works at Costco. The Debtors’ adjusted
24 gross income for the year ending 2014 was \$167,398. Debtors do not have any other source of
25 income.
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4.2 Assets.

The Debtors have assets consisting of real and personal property. However, they do not own any property with significant value in excess of allowable state exemption limits. The Debtors' property is listed in Schedules A and B, a copy of which is attached hereto as Exhibit "B."

4.3 Liabilities.

Claims against the Debtors are set forth in the Debtors' Schedules D, E, and F, a copy of which is attached hereto as Exhibit "C."

FOR PURPOSES OF PLAN COMPUTATION, ALL OBLIGATIONS OF THE VARIOUS CREDITORS LISTED IN THE SCHEDULES IN THIS DISCLOSURE STATEMENT AND PLAN SHOULD BE CONSIDERED AS ESTIMATES ONLY AND ALL CLAIMS ARE CONSIDERED DISPUTED AS TO THE AMOUNT UNLESS SUPPORTED BY A TIMELY FILED PROOF OF CLAIM (AND IF OBJECTION THERETO IS FILED BY DEBTORS FOLLOWING RESOLUTION BY THE BANKRUPTCY COURT AS TO AMOUNT OF THE CLAIM), OR IF THE CLAIM HAS BEEN SCHEDULED AS UNDISPUTED, FIXED AND LIQUIDATED. ALL CREDITORS' CLAIMS NOT SUPPORTED BY TIMELY FILED PROOF OF CLAIM OR SCHEDULED AS UNDISPUTED, FIXED AND LIQUIDATED, MAY BE EXCLUDED FROM PLAN COMPUTATIONS AND DISTRIBUTIONS UNDER THE PLAN OR AT DEBTORS' OPTION, INCLUDED AT THE AMOUNTS OR VALUES LISTED HEREIN.

V. SUMMARY OF PLAN

The following description of the Plan is for informational purposes only and does not purport to change or supersede any of the specific contractual language of the Plan. THE PLAN IS

1 CONTROLLING IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE CONTENTS OF
2 THE PLAN AND THE CONTENTS OF THIS DISCLOSURE STATEMENT.

3 The Debtors will retain control of their assets and use their income to make the payments set
4 forth in Article V of the Plan. Any funds remaining in the Plan Fund shall be turned over to the
5 Debtors upon payment of all Allowed Claims in full or to the duly appointed and acting Chapter 7
6 Trustee, if this case is converted to a case under Chapter 7.
7

8 5.1 Classification and Treatment of Claims.

9 As required by § 1122 of the Bankruptcy Code, the Plan divides Claims against the Debtors
10 into classes which the Debtors believe are in compliance with the Bankruptcy Code. The classification
11 and treatment of these claims is as follows:
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13 5.1.1 Class 1: Administrative. Class 1 claims will consist of all allowed
14 Administrative Claims for actual and necessary costs and expenses of administration entitled to priority
15 under §§ 503(b) and 507(a)(2) of the Bankruptcy Code. This Class includes, without limitation, post-
16 petition tax claims, Debtors' attorneys' fees, approved accounting fees, and fees due the United States
17 Trustee, if any. To date the Debtors have incurred approximately \$18,000 in attorneys' fees and costs
18 and estimate that they will incur an additional \$6,000 in administrative expenses before the Plan is
19 confirmed and this case closed. Debtors will pay the Class 1 Claims in full by making payments from
20 excess monthly income. The holders of Allowed Class 1 Claims shall be paid in full on the Effective
21 Date of the Plan or upon such other terms as the Debtors and the holders of Allowed Class 1 Claims
22 agree. **Class 1 is unimpaired.**
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24 5.1.2 Class 2: Priority Claim of Internal Revenue Service. Class 2 consists of the
25 Priority Claim of the Internal Revenue Service for pre-petition taxes in the total amount of \$1,864.87.
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1 Debtors will pay the Class 2 Priority Claim by making regular monthly installment payments with 3%
2 interest until paid in full, over a period ending no later than five years following the Petition Date.

3 Debtors will make payments on the Class 2 Priority Claim from their excess monthly income,
4 beginning in the month following payment in full of any Class 1 Administrative Claims. **Class 2 is**
5 **impaired.**
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7 5.1.3 Class 3: Secured Claim of BMO Harris Bank, N.A. Class 3 consists of the
8 Secured Claim of BMO Harris Bank, N.A., which is secured by a first position Deed of Trust on the
9 Debtors' residence located at 9112 W. Montana De Oro Ct., Peoria, Arizona 85383. Debtors will
10 continue to make the regularly scheduled monthly payments in accordance with the pre-bankruptcy
11 loan documents. To the extent the loan documents provide for default resulting from the Debtors'
12 bankruptcy filing, such default shall not be enforceable. Further, to the extent the loan documents
13 contain a due on sale clause, such clause shall not be enforceable. The Class 3 Secured Claimant shall
14 retain a lien securing its Allowed Claim. The lien securing the Allowed Class 3 Claim shall be
15 extinguished upon payment in full of the Allowed Class 3 Claim. **Class 3 is impaired.**
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18 Class 3-A: Secured Claim of Wells Fargo Bank, N.A. Class 3-A consists of
19 the Allowed Secured Claim of Wells Fargo Bank, N.A., which is secured by a second position Deed of
20 Trust on the Debtors' residence located at 9112 W. Montana De Oro Ct., Peoria, Arizona 85383.
21 There is a past due mortgage balance estimated to be \$5,616.00, which the Debtors will cure by
22 making equal monthly payments over a five (5) year period. Debtors will continue to make the
23 regularly scheduled monthly payments in accordance with the pre-bankruptcy loan documents. To
24 the extent the loan documents provide for default resulting from the Debtors' bankruptcy filing, such
25 default shall not be enforceable. Further, to the extent the loan documents contain a due on sale clause,
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1 such clause shall not be enforceable. The Class 3-A Secured Claimant shall retain a lien securing its
2 Allowed Claim. The lien securing the Allowed Class 3-A Claim shall be extinguished upon payment
3 in full of the Allowed Class 3-A Claim. **Class 3-A is impaired.**

4 Class 3-B: Secured Claim of BMO Harris Bank, N.A. Class 3-B consists of
5 the Allowed Secured Claim of BMO Harris Bank, N.A., which is secured by a third position Deed of
6 Trust on the Debtors' residence located at 9112 W. Montana De Oro Ct., Peoria, Arizona 85383.
7 Debtors assert that the amount owed to senior lienholders exceeds the value of the property, such that
8 there is no equity to secure any portion of BMO Harris Bank's Allowed Claim. The terms of the
9 *Order Granting Motion to Value Real Property and to Avoid Junior Lien of BMO Harris Bank, N.A.*,
10 which was signed by the Court on April 7, 2016 (Dkt. #46), shall control the treatment of the Class 3-B
11 Claim and are incorporated herein by this reference. The entire Allowed Class 3-B Claim shall be
12 treated as a General Unsecured Claim in accordance with Class 6. **Class 3-B is impaired.**

13 5.1.4 Class 4: Secured Claim of Mercedes-Benz Financial Services USA, LLC.

14 Class 4 consists of the Allowed Secured Claim of Mercedes-Benz Financial Services USA, LLC
15 ("Mercedes-Benz"), which is secured by a lien in a 2009 Mercedes C300W. Mercedes-Benz shall
16 have an Allowed Secured Claim of \$7,904.87, payable over five (5) years at the contract interest
17 rate of 1.74% with payments commencing on the Effective Date. The remaining balance of the
18 Allowed Class 4 Claim shall be treated as a General Unsecured Claim in accordance with Class 6.
19 In the event the Debtors reach a stipulated agreement with Mercedes-Benz regarding treatment of
20 its claim under the Plan, the terms of the stipulation will control treatment and be binding for
21 purposes of the Plan. **Class 4 is impaired.**

1 5.1.5 Class 5: Secured Claim of Aero Federal Credit Union. Class 5 consists of the
2 Allowed Secured Claim of Aero Federal Credit Union (“Aero”), which is secured by a lien in a
3 2010 Honda CRV. Debtors assert that the fair market value of the CRV is no more than \$14,684.00
4 based on its current condition and comparable sales. Aero shall have an Allowed Secured Claim of
5 \$14,684.00, payable over five (5) years at the contract interest rate of 2.7% with payments
6 commencing on the Effective Date. The remaining balance of the Allowed Class 5 Claim shall be
7 treated as a General Unsecured Claim in accordance with Class 6. In the event the Debtors reach a
8 stipulated agreement with the Class 5 Claimant regarding treatment of its claim under the Plan, the
9 terms of the stipulation will control treatment and be binding for purposes of the Plan. **Class 5 is**
10 **impaired.**

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13 5.1.6 Class 6: General Unsecured Claims. Class 6 consists of the Allowed
14 Unsecured Claims of Creditors. The following is a list of General Unsecured Claims against the
15 Debtors:

Claim No.	Name of Creditor	Amount of Claim
	Aero Federal Credit Union	\$2,730.00
	BMO Harris Bank, N.A.	\$215,000.00
4	Capital One, N.A. (Kohls/CapOne)	\$20.31
	Chase Bank (Chase Card)	\$23,703.00
	Chase Bank (Chase Card)	\$61.00
	Citibank SD	\$20,385.00
	Fed Loan Servicing	\$9,000.00
	HonorHealth	\$1,155.01
	HonorHealth	\$1,155.00
1	Internal Revenue Service	\$535.94
2	MB Financial Services USA, LLC (secured)	\$0.00
5	Wells Fargo Bank, N.A. (secured)	\$0.00
6	Wells Fargo Bank, N.A.	\$2,775.26
3	Wells Fargo Financial National Bank (Wells Fargo Home Projects Visa)	\$4,007.39
	Yavapai Regional Medical Center	<u>\$889.64</u>

	Total Unsecured Claims =	\$281,417.55
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Class 6 Claimants will receive quarterly distributions under the Plan on a pro-rata basis, commencing in the month following payment in full of Administrative and Priority Claims. Debtors shall fund the Plan by making monthly payments from their Excess Cash Flow in an amount sufficient to fund the value of the Debtor’s Liquidation Equity (as calculated in the Liquidation Analysis, Section 5.2., *infra*). Debtors estimate that approximately \$14,000.00 will be available for distribution to General Unsecured Creditors and that payment will commence in the fourth year of the Plan. **Class 6 is impaired.**

5.1.7 Class 7: Debtors’ Interest. Pursuant to § 1129(a)(15) and (b)(2)(B)(ii) of the Bankruptcy Code, the Debtors shall retain their interest in all estate property in consideration of their funding of Allowed Claims and shall receive all exempt property.

5.2 Liquidation Analysis.

The following is a Liquidation Analysis indicating what the Debtors believe creditors would receive in the event of a liquidation of the Debtors’ property. The figures for “market value” and “liquidation value” are the Debtors’ best estimates on what the assets are worth on a market or liquidation basis.

Asset	Market Value	Liquidation Value ¹	Exemption	Secured Claim	Equity
Homestead	585,000	526,500	150,000	831,905	0
Timeshare	3,000	2,700	0	0	2,700
2010 Honda CRV	14,684	13,216	0	17,414	0
2009 Mercedes C300	12,592	11,333	6,000	9,275	0
2003 Jeep Liberty	1,560	1,404	0	0	1,404
2002 Starcraft Trailer	1,500	1,350	0	0	1,350

¹ Debtors assume a 10% cost of sale on liquidation of the Debtors’ non-liquid assets.

1	Household Goods	11,700	10,530	12,000	0	0
	Books/Art Objects	950	855	200	0	655
2	Sports Cards	600	540	0	0	540
3	Computers & Accessories	400	360	400	0	0
	Guitar	200	180	200	0	0
4	Bicycles	150	135	150	0	0
	Golf Clubs	200	180	0	0	180
5	Umpire Equipment	750	675	750	0	0
6	Firearms	3,700	3,330	1,500	0	1,830
	Clothing	1,000	900	1,000	0	0
7	Weddings Rings	2,000	1,800	2,000	0	0
	Watches	400	360	300	0	60
8	Misc. Jewelry	1,800	1,620	0	0	1,620
9	Pets	20	18	20	0	0
	Lawn Furniture/Equip.	300	270	0	0	270
10	Tools	1,050	945	0	0	945
	Safe	1,000	900	0	0	900
11	Bank Accounts	850	850	600	0	250
12	State Farm Ins. Check	7,242	7,242	7,242	0	0
13	Debtor IRA – Morgan Stanley	41,666	41,666	100%	0	0
14	Son’s IRA – Morgan Stanley (UTMA)	7,726	7,726	100%	0	0
15	Honeywell 401(k)	241,000	241,000	100%	0	0
16	Food Storage	200	180	200	0	0
	Liquidation Equity =					\$12,704

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Creditors should note that on a liquidation basis, full market value for assets cannot be obtained. Further, there are costs associated with a liquidation of assets that must be paid out of any sale proceeds. The liquidation analysis does not contain an estimation of any tax liability which could be associated with liquidation. **Creditors should note that after payment of Administrative and Priority Claims, no Liquidation Equity remains for the benefit of General Unsecured Claims. Accordingly, there is not a required distribution in favor of Class 6 General Unsecured Claims under the Liquidation Analysis.** This analysis is provided only for informational purposes since the Debtors’ Plan does not contemplate liquidation in this fashion.

1 VI. MEANS TEST AND DISPOSABLE INCOME ANALYSIS AS OF THE PETITION DATE
2 AND CURRENT INCOME AND EXPENSE ANALYSIS.

3 Pursuant to § 1129(a)(15) of the Bankruptcy Code, the Court shall confirm a plan only if: in a
4 case in which the debtor is an individual and in which the holder of an Allowed Unsecured Claim
5 objects to the confirmation of the Plan, what the holder of such Allowed Unsecured Claim shall receive
6 under the Plan is either (A) the value, as of the Effective Date of the Plan, of the property to be
7 distributed under the Plan on account of such Allowed Unsecured Claim is not less than the amount of
8 such Allowed Unsecured Claim, or (B) the value of the property to be distributed under the Plan is not
9 less than the projected disposable income of the debtor (as defined in § 1325 (b)(2)) to be received
10 during the 5-year period beginning on the date that the first payment is due under the Plan, or during
11 the period for which the Plan provides payments, whichever is longer.
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13 Section 1325(b)(2) defines disposable income as current monthly income received by the
14 debtor (other than child support payments, foster care payments, or disability payments for a dependent
15 child made in accordance with applicable non-bankruptcy law to the extent reasonable necessary to be
16 expended (A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a
17 domestic support obligation, that first becomes payable after the date the petition is filed; and (ii) for
18 charitable contributions (that meet the definition of “charitable contribution” under § 548(d)(3) to a
19 qualified religious or charitable entity or organization (as defined in § 548(d)(4) in an amount not to
20 exceed 15 percent of gross income of the debtor for the year in which the contributions are made)); and
21 (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation,
22 preservation, and operation of such business.
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25 Pursuant to Schedule I, the Debtors’ combined average monthly income is presently
26 \$10,110.00. According to the Debtors’ Schedule J, the Debtors’ average monthly expenses are
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1 \$9,347.00. Therefore, the Debtors' monthly net income is \$763.00. Pursuant to § 1129(a)(15) of the
2 Bankruptcy Code, because the Debtors are individuals, and assuming a holder of an allowed unsecured
3 claim objects to the confirmation of the Plan, the value of property to be distributed under the Plan
4 cannot be less than the projected disposable income of the Debtors (as defined in § 1325(b)(2)) to be
5 received during the 5-year period beginning on the date that the first payment is due under the Plan, or
6 during the period for which the Plan provides payments, whichever is longer. Here, \$763.00
7 multiplied by 60 months equals \$45,780.00. Accordingly, creditors should note that the amount
8 needed to be paid into the Plan to satisfy §1129(a)(15) of the Bankruptcy Code is \$45,780.00.
9 Administrative and Priority Claims must be satisfied in full before a return, if any, is provided to
10 general unsecured creditors. Accordingly, the Debtors will make any distributions in favor of Class 6
11 General Unsecured Claims after payment in full of Administrative and Priority Claims. Debtors
12 reserve the right to fund the payments required under the plan, in whole or in part, from exempt assets
13 or financing, and may pay all Allowed Claims in fewer than the five years contemplated by the
14 Bankruptcy Code. The Debtors provide a schedule of their annualized projections of income,
15 expenses, and payments under the Plan, by class, in the spreadsheet attached hereto and incorporated
16 herein as Exhibit "D." Pursuant to the attached projections, the Debtors estimate that they will make a
17 plan payment of \$4,270.00 per month.
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21 **VII. IMPLEMENTATION OF THE PLAN**

22 The Plan will be funded by the Debtors' post-petition earnings and/or liquidation of exempt
23 assets. The Reorganized Debtors shall act as the Disbursing Agent under the Plan. In the event any
24 entity which possesses an Allowed Secured Claim, or any other lien on any of the Debtors' property
25 for which the Plan requires the execution of any documents to incorporate the terms of the Plan, fails to
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1 provide a release of its lien or execute the necessary documents to satisfy the requirements of the Plan,
2 the Debtors may record a copy of their Plan and the Confirmation Order with the appropriate
3 governmental agency and such recordation shall constitute the lien release and creation of the
4 necessary new liens to satisfy the terms of the Plan. If the Debtors deem advisable, they may obtain a
5 further Order from the Court that may be recorded in order to implement the terms of the Plan.
6

7 **VIII. COMPLIANCE WITH BANKRUPTCY CODE**

8 In order to confirm the Plan, the Bankruptcy Court must make a series of determinations
9 concerning the Plan, including those set forth below. The Debtors believe that each of these conditions
10 has been met and will seek rulings of the Bankruptcy Court to this effect at the confirmation hearing.
11

12 In addition, the Bankruptcy Code requires that the Plan be accepted by requisite votes of
13 holders of claims and interests. If any member of an impaired class does not accept the Plan, the
14 Bankruptcy Court must find that confirmation of the Plan is in the “best interests” of such entities.

15 8.1 Classification of Claims and Interest. The Bankruptcy Code requires that a plan of
16 reorganization place each creditor’s claim and each interest holder’s interest in a class with other
17 claims or interests that are “substantially similar” to one another. The Debtors believe that the Plan’s
18 classification meets the Bankruptcy Code standard.
19

20 8.2 Section 1111(b) Election. Section 1111(b) of the Bankruptcy Code provides that as a
21 general rule, a secured claim is to be accorded a treatment in the Chapter 11 Plan that is the same as
22 would be received if it were a recourse claim, regardless of whether or not the claim is non-recourse by
23 agreement or applicable law. Section 1111 also provides an opportunity for a partially secured creditor
24 whose claim is treated by the proposed Plan as partially secured and partially unsecured to acquiesce in
25 such bifurcation of their claim or, alternatively, to elect to treat the claim as fully secured.
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1 8.3 Technical Requirements. To be confirmed, the contents of a plan must comply with the
2 technical requirements of Chapter 11 of the Bankruptcy Code, which the Debtors believe has been
3 done.

4 8.4 Good Faith. To be confirmed the Bankruptcy Court must find that the debtor has
5 proposed the plan in good faith. In the instant case, this requirement is met because the Plan
6 contemplates a bona fide reorganization in which creditors will be paid an amount on behalf of their
7 claims that is greater than would be received through liquidation or conversion to a Chapter 7
8 proceeding.

9 8.5 Disclosure. The Bankruptcy Court must find that the Debtors' disclosures concerning
10 the Plan have been adequate and have included information concerning all payments made or promised
11 in connection with the Plan and the bankruptcy case, as well as the identity, affiliations, and
12 compensation to be paid to all officers, directors, and other insiders. The Debtors believe this
13 requirement has been met by this Disclosure Statement.

14 8.6 Feasibility. The Plan may not be confirmed if the Bankruptcy Court finds that
15 confirmation is likely to be followed by the liquidation of the reorganized debtor or the need for further
16 financial reorganization. The Debtors believe that they will be able to meet their obligations under the
17 Plan without further reorganization, as set forth herein.

18 8.7 Best Interests. Notwithstanding acceptance of the Plan by creditors and interest holders
19 impaired under the Plan, if a claimant or interest holder does not accept the Plan, then the Bankruptcy
20 Court must independently determine that the Plan is in the best interests of that claimant's or interest
21 holder's class. To meet this test, the Court must determine that each claim or interest in the impaired
22 class will receive under the Plan, as of the Effective Date, property of a value at least equal to the value
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1 that each such holder would receive in the Debtors' liquidation under Chapter 7 of the Bankruptcy
2 Code. In this case, the Liquidation Analysis—contained in Section 5.2 of Part V, *supra*—demonstrates
3 that this requirement has been met.

4
5 8.8 Absolute Priority Rule. The Debtors' ability to "cramdown" the Plan over the
6 objections of creditors may be affected, in part, by the applicability of the "Absolute Priority Rule"
7 in the case. The Absolute Priority Rule provides, in essence, that junior claimants, including the
8 Debtors, are barred from taking anything under the Plan unless senior claimants are paid in full. 11
9 U.S.C. § 1129(b)(2)(B)(ii). In the event the Absolute Priority Rule is implicated in this case, the
10 Debtors will comply with the rule by contributing "new value" of no less than \$12,704.00 (the total
11 value of non-exempt property they will retain under the Plan) as a lump sum payment on the
12 Effective Date to be distributed to creditors in accordance with Section 5.1, *supra*.

13
14 **IX. TAX CONSEQUENCES OF PLAN**

15 In 1978, a massive revision of the bankruptcy laws was enacted as the Bankruptcy Code now
16 in effect. In turn, the impact of the Bankruptcy Code on the existing tax laws led to the enactment of
17 the Bankruptcy Tax Act of 1980, P.L. 96-589, 94 Stat. 3389 (1980). This Act made a number of
18 significant changes in the law regarding, inter alia, the way in which a bankruptcy estate is taxed,
19 whether the occurrence of a bankruptcy filing interrupts a debtor's taxable year, whether income and
20 deductions belong to the debtor or the estate, and whether individual losses are available to the estate.

21
22 **CLAIMANTS ARE ADVISED TO CONSULT WITH THEIR TAX ADVISORS**
23 **CONCERNING THE INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS**
24 **CONTEMPLATED IN THIS PLAN, INCLUDING STATE AND LOCAL TAX**
25 **CONSEQUENCES.**
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1 X. VOTING/CONFIRMATION/ALTERNATIVES

2 10.1 Voting. A creditor may vote either to accept or reject the Plan. Only the votes of
3 impaired classes will be counted in connection with confirmation of the Plan, since classes of claims
4 and interests which are not impaired are deemed to have accepted the Plan. In determining acceptance
5 of the Plan, votes will be counted only if submitted by a party with an Allowed Claim or an Allowed
6 Interest, and the ballot for voting on the Plan does not constitute a proof of claim for this purpose. A
7 claim to which an objection has been filed is not an Allowed Claim unless and until the Bankruptcy
8 Court has ruled on the objection; and although holders of disputed claims will receive ballots, their
9 votes will not be counted unless the Bankruptcy Court temporarily allows such claims for the purpose
10 of voting on the Plan.
11

12
13 10.2 Confirmation. For the Plan to be approved, it must either (i) be accepted by at least
14 two-third in amount and more than one-half in number of the creditors of each impaired class, or (ii) be
15 approved by the Court as being in the best interest of all parties within a particular class despite the
16 failure to receive the required votes (i.e. “cramdown”).
17

18 The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by
19 holders of two-thirds in dollar amount and a majority in number of claims of that class, counting only
20 those members of the class who actually vote. The Bankruptcy Code defines acceptance of a plan by a
21 class of interests (equity securities) as acceptance by two-thirds of the number of shares, counting only
22 those shares actually voted.
23

24 Classes of claims and interests that are unimpaired under the Plan are conclusively deemed to
25 have accepted the Plan. A class of creditors or interest holders is unimpaired if the Plan (i) does not
26 alter the legal, equitable or contractual rights between the Debtor and the creditor or interest holder
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1 (with the exception of reinstating the claim by curing any defaults), or (ii) pays the claimant the full
2 amount of the claim or interest by cash payment on the Effective Date. Classes of claim and interests
3 that receive no distribution under the Plan are deemed to have rejected the Plan. Consequently, ballots
4 are being sent only to those classes which are impaired but are to receive a distribution under the Plan.
5

6 The Plan may be confirmed by the Bankruptcy court even if it is not accepted by all classes of
7 impaired claim, as long as at least one impaired class of claims has accepted.

8 10.3 Alternative to Confirmation. In the event this Plan is not confirmed, the Chapter 11
9 proceeding can be (i) continued for the submission of other plans, (ii) converted to Chapter 7, or (iii)
10 dismissed. In the event the Plan is not confirmed through acceptance of the claimholders, it is the
11 Debtors' intention to seek confirmation through cramdown.
12

13 10.4 Effect of Confirmation. Except as otherwise provided herein, the rights afforded in
14 the Plan shall be in exchange for, and in complete satisfaction and release of, all claims against the
15 Debtors of any nature whatsoever. All holders of claims against the Debtors shall be precluded from
16 asserting against the Debtors, the Estate, or the assets or properties of the Debtors or the Estate any
17 other or further claim based upon any omission, transaction or other activity of any kind or nature
18 that occurred prior to the Effective Date. This release shall be effective as to each claim, regardless
19 of whether the claim is listed on the Debtors' Statements or Schedules filed in these Chapter 11
20 proceedings, whether a proof of claim was filed, whether such proof of claim was withdrawn,
21 whether the claim is an Allowed Claim, in whole or in part, or whether the holder of the claim votes
22 to accept or reject this Plan. Upon the Effective Date, all the property of the Debtors will vest in the
23 Debtors, which, subject to the obligations set forth in this Plan, may utilize the property free of any
24 burdens of the Bankruptcy Code and without need to obtain Court approval of its actions. This
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1 release is not a discharge and the Debtors is entitled to a discharge only as permitted by 11 U.S.C. §
2 1141(d)(2) and (5).

3 **XI. INFORMATION/REPRESENTATIONS**

4 11.1 Source of Information. Unless otherwise stated, all of the information contained herein
5 is based on information supplied by the Debtors or its agents, and no representations concerning the
6 Debtors are authorized by the Debtors other than as set forth in this Disclosure Statement.

7 11.2 Conflicts. To the extent any information set forth in this Disclosure Statement conflicts
8 with any information set forth in the Debtors' schedules or statement of financial affairs, this
9 Disclosure Statement will govern and will, to the extent necessary, constitute an amendment to the
10 affected schedules or statement of financial affairs.

11 11.3 Unauthorized Representations. Any representations or inducements made to secure
12 acceptance other than as contained in this Disclosure Statement should not be relied upon in arriving at
13 a decision, and such representations and inducements should be reported to counsel for the Debtors,
14 who in turn shall deliver such information to the Court for appropriate action.

15 11.4 Disclaimer.

16 **NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE**
17 **AUTHORIZED OTHER THAN AS SET FORTH HEREIN. YOU SHOULD NOT RELY ON**
18 **ANY REPRESENTATIONS OR INDUCEMENTS TO ACCEPT THE PLAN OTHER THAN**
19 **THOSE CONTAINED HEREIN.**

20 **AN ACCOUNTANT HAS NOT REVIEWED OR APPROVED THE INFORMATION**
21 **CONTAINED HEREIN. MUCH OF THE INFORMATION CONTAINED HEREIN WAS**
22 **DERIVED FROM THE DEBTORS OR THE DEBTORS' RECORDS AND HAS NOT BEEN**
23

1 **VERIFIED FROM INDEPENDENT SOURCES. THE DEBTORS ARE UNABLE TO**
2 **WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS**
3 **WITHOUT ANY INACCURACY, ALTHOUGH ALL SUCH INFORMATION IS**
4 **ACCURATE TO THE DEBTORS' BEST KNOWLEDGE, INFORMATION, AND BELIEF.**

5
6 **THE COURT HAS NOT VERIFIED THE ACCURACY OF THE INFORMATION**
7 **CONTAINED HEREIN. THE COURT'S APPROVAL OF THE DISCLOSURE**
8 **STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR APPROVES THE**
9 **PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE, IT IS SUFFICIENT TO**
10 **PROVIDE AN ADEQUATE BASIS FOR CREDITORS AND INTEREST HOLDERS TO**
11 **MAKE INFORMED DECISIONS WHETHER TO APPROVE OR REJECT THE PLAN.**

12
13 **XII. NON-ALLOWANCE OF PENALTIES AND FINES**

14 No distribution shall be made under this Plan on account of, and no allowed claim, whether
15 secured, unsecured, priority, or administrative, shall include any fine, penalty, exemplary or punitive
16 damages, late charges, or other monetary charge relating to or arising from any default or breach by
17 Debtors, and any claim on account thereof shall be deemed disallowed whether or not an objection to it
18 is filed.

19
20 **XIII. EXECUTORY CONTACTS**

21 The Debtors reject all executory contracts and unexpired leases, with the exception of the
22 following:

23 Verizon Wireless Cell Phone Provider
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1 Claims for any executory contracts or unexpired leases rejected by the Debtors shall be filed no
2 later than ten (10) days after the earlier of Confirmation or the date the executory contract or unexpired
3 lease is specifically rejected. Any such Claims not timely filed and served shall be disallowed.
4

5 **XIV. MODIFICATION OF PLAN**

6 In addition to their modification rights under §1127 of the Bankruptcy Code, the Debtors may
7 amend or modify their Plan at any time prior to Confirmation without leave of the Court. The Debtors
8 or Reorganized Debtors may propose amendments and/or modifications of their Plan at any time
9 subsequent to Confirmation with leave of the Court and upon notice to Creditors. After Confirmation
10 of the Plan, the Debtors or Reorganized Debtors may—with approval of the Court, as long as it does
11 not materially or adversely affect the interests of Creditors—remedy any defect or omission or
12 reconcile any inconsistencies in the Plan or Confirmation Order, if necessary to carry out the purposes
13 and intent of their Plan.
14

15 **XV. CLOSING OF THE CASE**

16 If the Court does not close the case on its own motion, the Reorganized Debtors will move the
17 Court to close this case once the Plan is deemed substantially consummated. Until substantial
18 consummation, the Reorganized Debtors will be responsible for filing pre- and post-confirmation
19 reports required by the United States Trustee and paying the quarterly post-confirmation fees of the
20 United State Trustee, in cash, pursuant to 28 U.S.C. § 1930, as amended. Pursuant to 11 U.S.C.
21 §1129(a)(12), all fees payable under section 1930 of title 28, as determined by the Court at the hearing
22 on confirmation of the Plan, will be paid, in cash, on the Effective Date.
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1 XVI. RETENTION OF JURISDICTION

2 The Court will retain jurisdiction until the Plan has been fully consummated for, including but
3 not limited to, the following purposes:

4 1. The Classification of Claims of any Creditors and the re-examination of any Claims
5 which have been allowed for the purposes of voting, and for the determination of such objections as
6 may be filed to the Creditor's Claims. The failure by the Debtors to object to or examine any Claim
7 for the purpose of voting shall not be deemed to be a waiver of the Debtors' rights to object to or to re-
8 examine the Claim in whole or in part.

9
10 2. To determine any Claims which are disputed by the Debtors.

11
12 3. To determine all questions and disputes regarding title to the assets of the estate, and
13 determination of all causes of action, disputes, or conflicts, whether or not subject to action pending as
14 of the date of Confirmation, between the Debtors and any other party, including but not limited to, any
15 rights of the Debtors to recover assets pursuant to the provisions of the Bankruptcy Code.

16
17 4. The correction of any defect, the curing of any omission, or any reconciliation of any
18 inconsistencies in the Plan, or the Confirmation Order, as may be necessary to carry out the purposes
19 and intent of the Plan.

20 5. The modification of the Plan after Confirmation, pursuant to the Bankruptcy Rules and
21 the Bankruptcy Code.

22 6. To enforce and interpret the terms and conditions of the Plan.

23
24 7. The entry of an order, including injunctions, necessary to enforce the title, rights, and
25 powers of the Debtors, and to impose such limitations, restrictions, terms, and conditions of such title,
26 right, and power that the Court may deem necessary.

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8. The entry of an order concluding and terminating this case.

DATED this 16th day of November, 2016.

DAVIS MILES MCGUIRE GARDNER, PLLC

/s/ M. Preston Gardner
Pernell W. McGuire
M. Preston Gardner

/s/ Roger L. Hayes
Roger L. Hayes

/s/ Sherry K. Hayes
Sherry K. Hayes