

1 Daniel Garrison (Bar No. 021495)  
2 Brian M. Blum (Bar No. 024243)  
3 **THE TURNAROUND TEAM, PLLC**  
4 4110 N. Scottsdale Rd., Ste. 340  
5 Scottsdale, Arizona 85251  
6 Tel: (480) 420-1999 | Fax: (480) 522-1515  
7 Dan@TurnaroundTeam.com  
8 Brian@TurnAroundTeam.com

9 *Attorneys for Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF ARIZONA**

12 In re:  
13 LEI Machining, LLC,  
14 Debtor.

Chapter 11 (Small Business)  
Case No.: 2:16-bk-07089-BKM

**SUPPLEMENT TO LEI  
MACHINING, LLC'S AMENDED  
DISCLOSURE STATEMENT,  
DATED APRIL 7, 2017**

15 Debtor, LEI Machining, LLC ("Debtor") files this Supplement to address  
16 three issues raised in response to the "LEI Machining, LLC's Second  
17 Amended Plan of Reorganization, Dated April 7, 2007" filed at Docket Entry  
18 "DE" 122 (the "Plan"), and the related "LEI Machining, LLC's Amended  
19 Disclosure Statement, Dated April 7, 2017" filed at DE 123 (the "Disclosure  
20 Statement"):

- 21 1. It provides updated information and analysis of the feasibility of and  
22 alternatives to Debtor's Plan, including addressing certain modifications  
23 made to the Plan through an Amendment to LEI Machining LLC's  
24 Second Amended Plan of Reorganization, Dated April 7, 2017 (the "Plan  
25 Amendment") contemporaneously filed herewith:
  - 26 a. Providing for the establishment and funding of an "Operating  
27 Reserve" for the reorganized Debtor; and,
  - 28 b. Providing for minimum quarterly distributions to the holders of  
allowed, general unsecured claims from and after the effective  
date of the Plan, which distributions will be increased in the event  
that free cash flow is available;

- 1 2. It addresses a modification to the pending Plan that conditions a  
2 temporary injunction of actions against the principals of LEI as third-  
3 party guarantors of LEI's debts on those principals executing tolling  
4 agreements, and provides legal analysis supporting such injunction;  
5 and,  
6 3. It addresses a modification to the pending Plan that allows interest to  
7 the holders of general unsecured claims in order to satisfy the  
8 requirements of the so-called "absolute priority rule" codified at Section  
9 1129(b)(2)(B)(i) of the Bankruptcy Code.

10 Debtor further relies upon, and incorporates herein by this reference, a) the  
11 Plan Amendment; and b) the "Declaration of Elvin Fant, Jr. in Support of  
12 Supplement to Disclosure Statement" ("Fant Declaration"), both filed  
13 contemporaneously herewith.

## 14 **I. FEASIBILITY AND BEST INTERESTS OF CREDITORS**

15 Debtor supplements Section IV.D of the Disclosure Statement, addressing  
16 feasibility, as follows. Filed contemporaneously herewith is the Fant  
17 Declaration, attached to which are two analyses of the financial outlook  
18 under the Plan:

19 *A. Effective Date Cash Projection.* The first of those attachments is a  
20 projection of the cash expected to be on hand as of a targeted July 1, 2017  
21 effective date of the Plan, and includes projections of how that effective-date  
22 cash is expected to be deployed. This projection incorporates the "Operating  
23 Reserve" concept, and provides for all expected inflows and outflows prior to  
24 July 1, 2017, a \$25,000 reserve for administrative expenses, and pre-funding  
25 overhead expenses and secured creditor payments for the month of July itself.  
26 It demonstrates the projected ability to distribute over \$11,000 to unsecured  
27 creditors on the effective date.

28 *B. General Plan Projection.* Also attached to Fant Declaration is a going-  
forward projection of the operation of the reorganized Debtor, incorporating  
the same Plan Amendment changes set forth above. The General Plan  
Projection begins with the bottom-line conclusions of the Effective Date Cash  
Projection, and then models the performance of the reorganized Debtor.  
Through the Fant Declaration, Debtor attests to the feasibility of attaining  
the gross revenues and maintaining the cost structures that this analysis  
illustrates. It incorporates the assumptions listed on the last page of the  
General Plan Projection. It demonstrates the projected ability of the  
reorganized Debtor to pay all unsecured creditors in approximately 5 years.

1                   **II. TEMPORARY INJUNCTION AGAINST GUARANTOR ACTIONS**

2                   The Plan currently provides, in Section X, that creditors are enjoined  
3 from taking collection activity against Elvin Fant, Jr. Joseph Fant, and Kelly  
4 Fant (the “Guarantors”) so long as the Debtor is performing under the plan.  
5 Contemporaneous with the filing of this Supplement, Debtor also has filed an  
6 Amendment to LEI Machining, LLC’s Second Amended Plan of  
7 Reorganization, Dated April 7, 2017 (the “Plan Amendment”).

8                   In the Plan Amendment, Debtor conditions the temporary injunction  
9 against guarantee actions against the Guarantors on those parties executing  
10 agreements that will toll the running of any applicable statute of limitations  
11 pertaining to such guarantee actions, and that will preserve all claims,  
12 defenses and setoffs applicable to such guarantee actions.

13                   The state of the law in the Ninth Circuit, on whether this type of  
14 provision is allowable, is unclear. Several years ago, Judge Marlar analyzed  
15 the cases and concluded that such a provision made the plan unconformable.  
16 *In re Linda Vista Cinemas, L.L.C.*, 442 B.R. 724, 739 (Bankr. D. Ariz. 2010)  
17 (“After its survey of the existing state of Ninth Circuit law, however, this  
18 court finds itself bound by what it feels is the Circuit's current precedent.  
19 Thus, even though this case is deserving, on the evidence presented, of  
20 confirmation, this court cannot get past what it believes to be the Circuit's  
21 pronouncements on the § 524(e) issue.”)

22                   In *Linda Vista*, the court relied primarily on *In re Rohnert Park Auto Parts,*  
23 *Inc.*, 113 B.R. 610, 611 (B.A.P. 9th Cir. 1990), and *In re Regatta Bay, LLC*, CV-09-  
24 0874-PHX-ROS, 2009 WL 5730501 (D. Ariz. Oct. 30, 2009), which followed *Rohnert*.  
25 In both of those cases, a similar provision was deemed a violation of § 524(e).

26                   However, in other jurisdictions, Courts have held, under different  
27 approaches, that such temporary injunctions against guarantee actions are  
28 permitted under the law and are not a violation of Section 524(e) of the  
Bankruptcy Code.

                  For example, some courts have simply held that 524(e) is not an  
*express* bar on releasing a guarantor (as that section says “. . . discharge  
'does not' affect liability of any other party . . .,” rather than “shall not”), and  
that such a release is an “other appropriate provision” that may be included  
in a plan pursuant to § 1123(b)(6). *In re Airadigm Communications, Inc.*, 519  
F.3d 640, 657 (7th Cir. 2008). Along that same line of reasoning, some courts  
have laid out factors to consider when determining whether the provision is  
appropriate. *E.g.*, *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir.  
2002). In *Dow Corning*, the court laid out a 7 factor test:

- 1 1. A sufficient relationship, such that a suit against the non-debtor is, in  
2 essence, a suit against the debtor or will deplete the assets of the estate;
- 3 2. The non-debtor has contributed substantial assets to the reorganization;
- 4 3. The injunction is essential to reorganization, namely, the reorganization  
5 hinges on the debtor being free from indirect suits against parties who  
6 would have indemnity or contribution claims against the debtor;
- 7 4. The impacted class, or classes, has overwhelmingly voted to accept the  
8 plan;
- 9 5. The plan provides a mechanism to pay for all, or substantially all, of the  
10 class or classes affected by the injunction;
- 11 6. The plan provides an opportunity for those claimants who choose not to  
12 settle to recover in full and;
- 13 7. The bankruptcy court made a record of specific factual findings that  
14 support its conclusions.")

15 Other courts have focused more on the practical effect on the Debtor's  
16 business and the scope of the injunction. *In re Bernhard Steiner Pianos USA,*  
17 *Inc.*, 292 B.R. 109, 116 (Bankr. N.D. Tex. 2002). *In re Seatco, Inc.*, 257 B.R.  
18 469, 474 (Bankr. N.D. Tex.), opinion modified on reconsideration, 259 B.R.  
19 279 (Bankr. N.D. Tex. 2001). In *Bernard Steiner*, the court held that a  
20 permanent injunction is prohibited, but a temporary injunction maybe be  
21 proper under "unusual circumstances," including "(1) when the non-debtor  
22 and debtor enjoy such an identity of interest that the suit against the non-  
23 debtor is essentially a suit against the debtor, and (2) when the third-party  
24 action will have an adverse impact on the debtor's ability to accomplish  
25 reorganization."

26 Here, the Debtor and the principals who have signed guarantees are  
27 very closely related, particularly Elvin Fant, Jr. who works in the shop full-  
28 time for compensation that is far below the market rate for someone of his  
level of technical skill. Collection activity against him personally, would  
threaten his income to the point that he would be unable to keep working for  
the Debtor. The Debtor could not recover from the loss of Mr. Fant Jr.'s  
labor. These are exactly the "unusual circumstances" contemplated by  
*Bernard Steiner*.

Moreover, the injunction proposed in the Plan Amendment is narrowly  
tailored, in that it only lasts so long as the Debtor is performing under the  
plan, and the guarantors have agreed to toll any applicable limitations

1 period to enforce the guarantees. In other words, if the plan does fail, the  
2 guaranteed creditors are in the same position as they are now.

3 Finally, the provision is distinguishable from that in Linda Vista and  
4 the cases cited there. Here, the Guarantors have agreed to toll the statute of  
5 limitations, and the plan proposes to pay the unsecured creditors in full,  
6 with interest.

### 7 **III. ABSOLUTE PRIORITY RULE**

8 The Plan currently provides that holders of allowed, general unsecured claims  
9 (classified as Class 10) will receive periodic distributions of cash from Debtor's  
10 continued operations in an amount necessary to satisfy their claims in full, but does  
11 not provide for any interest. The class of general unsecured claims under the Plan  
12 did not vote to accept the Plan. Section 1129(b)(1) of the Bankruptcy Code allows a  
13 proposed chapter 11 plan to be confirmed by the court, notwithstanding the fact that  
14 certain classes of claimants have failed to accept the plan, so long as the "plan does  
15 not discriminate unfairly, and is fair and equitable, with respect to each class of  
16 claims or interests that is impaired under, and has not accepted the plan."

17 Subsection 1129(b)(2) of the Code further instructs that "[f]or purposes of this  
18 subsection, the condition that a plan be fair and equitable with respect to a class  
19 includes the following requirements:

20 (B) With respect to a class of unsecured claims—

21 (i) the plan provides that each holder of a claim of such class  
22 receive or retain on account of such claim property of a value, as of  
23 the effective date of the plan, equal to the allowed amount of such  
24 claim . . . .

25 Because the Plan already provides for general unsecured claims to be paid in full  
26 in their allowed amount, the requirements of Section 1129(b)(2)(B)(i) are met so long  
27 as a time-value-of-money factor also is provided. In the Plan Amendment  
28 contemporaneously filed with this Supplement, Debtor has amended the Plan to  
provide for the holders of allowed, general unsecured claims to be paid simple,  
annual interest of 5%.

The Plan rate of interest is fair and reasonable. It provides the same interest rate  
to unsecured creditors as has been provided to (and accepted by) Debtor's senior  
secured creditor. The Plan rate of interest also represents a significant risk  
premium. The Plan has an 84-month term, and the current rate for 7-year treasury  
notes is in the range of 2.2%. The rates for treasury notes are generally considered to  
be a market surrogate for a "risk-free" rate for the same temporal term—or, in other

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words, a rate that compensates only for the perceived risk of market fluctuation in rates for the stated term. The Plan rate of interest provides a further increment of 2.8% interest, or a premium of 127% of the risk-free rate, for 84 months, compensating the holders of allowed, general unsecured creditors with coverage for the risks of default and insufficient security.

DATED: May 17, 2017

**THE TURNAROUND TEAM, PLLC**

*/s/Brian M. Blum*

Daniel E. Garrison

Brian M. Blum

*Attorneys for Debtor/ Plan Proponent*