

Donald W. Powell – State Bar No. 3238
CARMICHAEL & POWELL, P.C.
6225 North 24TH Street, Suite 125
Phoenix, Arizona 85016
Telephone (602) 861-0777
Email: d.powell@cplawfirm.com

Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA

In re

LOS DOS MOLINOS CAFÉ Y
CANTINA, LLC,

Debtor.

No. 2:17-07095-PS

CHAPTER 11

DISCLOSURE STATEMENT

THE DEBTOR PROVIDES THIS DISCLOSURE STATEMENT TO CREDITORS OF SUCH DEBTOR AND OTHER INTERESTED PARTIES. THE PURPOSE OF THIS DISCLOSURE STATEMENT IS TO GIVE INFORMATION WHICH THE DEBTOR BELIEVES TO BE MATERIAL, IMPORTANT AND ADEQUATE FOR MAKING AN INFORMED DECISION IN VOTING ON THE REORGANIZATION PLAN PROPOSED BY THE DEBTOR AND ON FILE WITH THIS COURT. A CLASS OF CREDITORS HAS ACCEPTED THE PLAN, IF AMONG THOSE CREDITORS, WITHIN SUCH CLASS, WHO VOTE ON THE PLAN AT LEAST TWO-THIRDS IN AMOUNT AND MORE THAN ONE-HALF IN NUMBER OF THE ALLOWED CLAIMS IN SUCH CLASS VOTE FAVORABLY FOR THE PLAN.

1 IF, HOWEVER, THE REQUISITE ACCEPTANCES ARE NOT OBTAINED, THE
2 COURT MAY NEVERTHELESS CONFIRM THE PLAN OF REORGANIZATION IF THE
3 COURT FINDS THAT SUCH PLAN OF REORGANIZATION ACCORDS FAIR AND
4 EQUITABLE TREATMENT TO THE CLASS REJECTING IT. IF SUCH REQUISITE
5 ACCEPTANCES ARE NOT OBTAINED, THE DEBTOR WILL URGE THE COURT TO
6 NEVERTHELESS CONFIRM THE PLAN OF REORGANIZATION.
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8 NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED BY
9 THE DEBTOR OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY
10 REPRESENTATION OR INDUCEMENT MADE TO SECURE ACCEPTANCES WHICH
11 IS OTHER THAN AS CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED
12 UPON IN ARRIVING AT A DECISION, AND SUCH REPRESENTATIONS AND
13 INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO,
14 IN TURN, SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT
15 FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.
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17 PLEASE BE AWARE THAT THE UNITED STATES BANKRUPTCY COURT HAS
18 NOT APPROVED OR VERIFIED THE ACCURACY OF THE STATEMENTS SET
19 FORTH IN THIS DISCLOSURE STATEMENT.
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21 I. History of Debtor.

22 The business of the Debtor is the operation of a Mexican food restaurant at 4855
23 E. Warner Road, Ste. 29, Phoenix, Arizona. CHERYL VITALE ("VITALE"), age 58, is
24 the owner of the Debtor. Additionally, she is the Manager/Member of the Debtor.
25

26 At age 16, VITALE began working in the Mexican food restaurant owned by her
27 parents, EDDIE and VICTORIA CHAVEZ, in Springerville, Arizona, such restaurant
28 having been opened in approximately 1976. EDDIE CHAVEZ has passed away, but

1 VICTORIA CHAVEZ remains the owner of such restaurant, which does business as LOS
2 DOS MOLINOS. A second LOS DOS MOLINOS restaurant was opened by the
3 Chavez family in approximately 1986 in Mesa, Arizona (Alma School & Broadway).
4 Again, VICTORIA CHAVEZ remains the owner of such location.
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6 In approximately 1990, a LOS DOS MOLINOS restaurant was opened in south
7 Phoenix (Central & Baseline) by the Chavez family. DOMINIQUE DELAPAZ, the
8 granddaughter of EDDIE and VICTORIA CHAVEZ, is the owner of said location. A
9 fourth LOS DOS MOLINOS restaurant was opened by the CHAVEZ family in
10 approximately 2002 in central Phoenix (now 11th Street & Camelback). SANDY
11 MELTON, daughter of EDDIE and VICTORIA CHAVEZ, is the owner of such location.
12 In approximately 2010, VITALE opened the fifth LOS DOS MOLINOS restaurant at 4825
13 E. Chandler Boulevard, Phoenix, Arizona. Subsequently, VITALE had the Debtor move
14 to its present address.
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16 II. Bankruptcy History.

17 The Chapter 11 proceeding was filed on June 22, 2017. Copies of Monthly
18 Financial Reports can be obtained upon request from DONALD W. POWELL, attorney
19 for the Debtor, 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016, telephone
20 number (602) 861-0777. On June 29, 2017, the law firm of CARMICHAEL & POWELL,
21 P.C., was appointed by the Bankruptcy Court as the attorneys for the Debtor.
22

23 III. Incidents Precipitating Chapter 11.

24 Over several years the Debtor became delinquent with the payment of
25 withholding taxes to INTERNAL REVENUE SERVICE ("IRS"). In approximately March,
26 April and May, 2017, IRS levied on the credit card payments due the Debtor in an
27 amount approximating \$180,000.00. Such levies came extremely close to forcing the
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1 Debtor to terminate the business. The Chapter 11 proceeding was filed to stay IRS
2 from continuing with such levies.

3 IV. Assets and Liquidation Analysis.

4 The Debtor is the owner of office equipment, including all computer equipment
5 and communication systems equipment and software, 35 tables and booths, 146 chairs,
6 credit card system, phone system, 2 walk-in refrigerators, 1 freezer,
7 plates/utensils/glasses, 2 marguerita machines, beer cooler, stove, and miscellaneous
8 restaurant equipment. The fair market value of said office equipment is approximately
9 \$7,500.00. Liquor inventory is owned with a fair market value approximating \$1,000.00
10 while food inventory is owned with a fair market value approximating \$500.00. The
11 liquidation value of such assets will approximate 70% of the fair market value.
12

13 The fair market value referenced herein represents what such assets would bring
14 pursuant to sale with substantial efforts rendered in a normal course of sale procedure.
15 The liquidation value represents a forced sale of the assets without reasonable and
16 normal business marketing efforts applicable. Such values above delineated are the
17 personal opinion of VITALE; due to the expense of the same, appraisals were not
18 obtained by the Debtor.
19

20 As of this date, the bank deposits of the Debtor approximate \$40,000.00.
21 Security and utility deposits are owned by the Debtor in an amount of approximately
22 \$7,900.00. Cash on hand is typically \$200.00.
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24 V. Valuation of Claims.

25 As of October 31, 2017, the Debtor possessed an administrative expense to
26 CARMICHAEL & POWELL, P.C., in an amount approximating \$13,937.92. An amount
27 is in trust with CARMICHAEL & POWELL, P.C., of \$5,708.00.
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1 IRS has filed a secured claim for prepetition withholding taxes of \$48,843.59; an
2 unsecured priority claim for prepetition withholding, income and unemployment taxes of
3 \$174,031.79; and a prepetition unsecured general claim of \$197,305.36. The Debtor
4 believes the levy amounts of IRS of \$180,000.00 have not been credited regarding the
5 aforementioned claims. The ARIZONA DEPARTMENT OF REVENUE ("ADOR") has
6 filed a priority unsecured claim for withholding and sales taxes of \$40,160.00. It is the
7 opinion of the Debtor that the valid and proven claims of unsecured creditors will
8 approximate \$250,000.00.

9 VI. Preparation and Accounting Information.

10 The books and records of the Debtor are being prepared under the supervision of
11 VITALE and THE BOOK BALANCER bookkeeping service. The Interim Monthly
12 Financial Reports have been prepared under the supervision of VITALE and THE BOOK
13 BALANCER bookkeeping service. Normal accounting procedures were utilized at all
14 times in determining valuation of assets, liquidation values, and amounts of claims.

15 VII. Post-Petition Matters.

16 On June 27, 2017, an Application to Employ Attorney was filed by the Debtor
17 regarding the law firm of CARMICHAEL & POWELL, P.C. As previously indicated, such
18 Application was approved by the Bankruptcy Court on June 29, 2017.

19 An Interview with the Office of the United States Trustee occurred on July 19,
20 2017. VITALE appeared on behalf of the Debtor.

21 The Meeting of Creditors was held on July 25, 2017. VITALE appeared and
22 testified on behalf of the Debtor.

23 A Chapter 11 Status Conference was conducted by the Bankruptcy Court on July
24 25, 2017. VITALE appeared on behalf of the Debtor.

25 On July 25, 2017, a Motion for Order Compelling Debtor to Provide Requested
26 Information, or in the Alternative to Convert or Dismiss Case, was filed by the United
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1 States Trustee. A Response was filed by the Debtor and the Debtor believes it is in
2 compliance with the requests of the United States Trustee.

3 On October 2, 2017, the Debtor filed a Motion to Assume Lease regarding its
4 present business location. On November 9, 2017, an Order for Assumption of Lease
5 was entered.

6 VIII. Business Expectations.

7 The restaurant is open 7 days a week, with the hours being 11:00 a.m. to 9:00
8 p.m. Monday through Saturday and 11:00 a.m. to 3:00 p.m. on Sunday. Since the filing
9 of the Chapter 11 Petition, the Debtor has reduced its staff by 7 employees, dramatically
10 reducing payroll. The Debtor presently has 5 employees besides VITALE.

11 The Debtor conducts happy hour from 2:00 p.m. to 7:00 p.m. daily. Each day the
12 Debtor provides a special item on the menu. Since the filing of the Chapter 11 Petition,
13 the Debtor has modified its purchasing methods, thereby reducing food costs.

14 VITALE is present at the restaurant daily and interacts with the customers. The
15 Debtor does provide catering services. The present location of the Debtor is resulting in
16 a significant increase in revenues. The business of Debtor is seasonal, with the prime
17 months being October through May. The location of the Debtor provides for a
18 significant family customer base.

19 IX. Executory Contracts.

20 As previously delineated herein, the Debtor has assumed the lease for its
21 business location. No other executory contracts are applicable.

22 X. Tax Consequences of Confirmation of the Plan.

23 The confirmation and consummation of the Plan may result in Federal income tax
24 consequences to holders of claims. Tax consequences to a particular creditor will
25 depend on the particular circumstances regarding the claim of that creditor. It is
26 recommended that holders of claims consult their own tax advisors as to the
27 consequences to them of the Plan under Federal and applicable State and local tax
28 laws.

1 XI. Alternatives to the Plan.

2 The alternatives to confirmation of the Plan of Reorganization of the Debtor are
3 the continuation of the Chapter 11 proceedings, conversion to Chapter 7 bankruptcy, or
4 dismissal of this matter. The Debtor does not believe the continuation of this matter
5 without a confirmed Plan of Reorganization is beneficial to any of the interested parties.
6 Likewise, the Debtor does not believe that dismissal will be of benefit to the interested
7 parties. The other consideration is conversion to Chapter 7. In a Chapter 7 liquidation,
8 a Trustee will be appointed, and the Trustee will require the services of an attorney and
9 the services of an accountant. The Debtor believes unsecured creditors will receive
10 significantly more under the Plan of Reorganization of the Debtor as opposed to Chapter
11 7 liquidation.

12 XII. Summary of Plan of Reorganization.

13 Set forth below is the Plan of Reorganization of the Debtor.

14 Classification of Creditors.

15 The classes of creditors are divided as follows:

16 Class 1. Expenses of Administration.

17 Class 2. IRS.

18 Class 3. ADOR.

19 Class 4. Unsecured creditors.

20 Class 5. Owner.

21 Treatment Provisions for Claims of Creditors.

22 The claims of creditors will be satisfied and treated as below set forth:

23 Class 1. The Debtor has certain administrative claimants. The
24 Debtor will pay any approved sums to administrative claimants within 30 days of the
25 applicable Court Order, unless the applicable administrative claimant agrees to a later
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1 date. Any sums due the United States Trustee are within this Class. This Class is not
2 impaired by the Plan.

3 Class 2. IRS is due unpaid and prepetition withholding, unemployment
4 and income taxes. Beginning 30 days after the date of confirmation, and continuing on
5 the same day of each month thereafter, the Debtor shall pay IRS \$2,500.00 on the valid
6 and proven secured and unsecured priority claims of IRS. Interest shall be paid to IRS
7 at the required rate. The Debtor's failure to comply with the Plan provisions concerning
8 the liability owed to IRS, which includes, but is not limited to, the failure to make the full
9 and timely payments, shall constitute a default of the Plan. If the Debtor fails to cure the
10 default within 30 days after written notice of the default from IRS or its agents, the entire
11 balance due IRS shall be immediately due and owing. Further, in the event of a default,
12 IRS may enforce the entire amount of its claim, exercise any and all rights and remedies
13 under applicable non-bankruptcy law which include, but are not limited to, state tax
14 collection procedures, and obtain any other such relief deemed appropriate by the
15 Bankruptcy Court. Any unsecured general claim of IRS shall be treated pursuant to the
16 terms of Class 4. This Class is impaired by the Plan.

17 Class 3. ADOR is due unpaid and prepetition withholding and sales
18 taxes. Beginning 30 days after the date of confirmation, and continuing on the same
19 day of each month thereafter, the Debtor shall pay ADOR \$750.00 until the valid and
20 proven unsecured priority claim of ADOR is paid. Interest shall be paid to ADOR at the
21 required rate. The Debtor's failure to comply with the Plan provisions concerning the
22 liability owed to ADOR, which includes, but is not limited to, the failure to make the full
23 and timely payments, shall constitute a default of the Plan. If the Debtor fails to cure the
24 default within 30 days after written notice of the default from ADOR or its agents, the
25 entire balance due ADOR shall be immediately due and owing. Further, in the event of
26 a default, ADOR may enforce the entire amount of its claim, exercise any and all rights
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1 and remedies under applicable non-bankruptcy law which include, but are not limited to,
2 state tax collection procedures, and obtain any other such relief deemed appropriate by
3 the Bankruptcy Court. Any unsecured general claim of ADOR shall be treated pursuant
4 to the terms of Class 4. This Class is impaired by the Plan.
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6 Class 4. The Debtor will pay unsecured creditors with valid and proven
7 claims the total amount of \$50,000.00, without interest. Such amount shall be paid in
8 semi-annual installments of \$5,000.00 beginning 6 months from the date of confirmation
9 and continuing every 6 months thereafter for a total of 10 semi-annual installments.
10 The Debtor estimates that an unsecured creditor with a valid and proven claim can
11 anticipate receiving, under the Plan, approximately 20% of said claim. Payments under
12 this Class shall be made on a prorata basis. This Class is impaired by the Plan.
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14 Class 5. The Owner of the Debtor is CHERYL VITALE ("VITALE").
15 Under the Plan, she will retain full ownership of the Debtor. From personal funds such
16 individual will contribute \$10,000.00 to assist in consummation of the Plan. It is the
17 belief of VITALE that if a Chapter 7 liquidation occurs, there will be absolutely no funds
18 left for the owner of the Debtor. Due to the amounts of administrative claims, secured
19 claims, tax priority claims, and unsecured claims, she believes no net value will be
20 applicable for the Debtor for an extensive period of time. VITALE is of the opinion that,
21 due to the fact that there is no net value of the Debtor, such amount of \$10,000.00 is an
22 equivalent value of her interest in the Debtor. Such amount of \$10,000.00 shall be
23 contributed within 1 year of the date of confirmation. Any noncompliance with 11
24 U.S.C. § 1129(b)(2)(B)(i), which provides that each holder of an unsecured claim in a
25 Class receive or retain on account of such claim property of a value, as of the effective
26 date of the Plan, equal to the allowed amount of such claim, shall be resolved by the
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1 new money which is being contributed to the Debtor, thereby satisfying the "new value
2 exception" to the absolute priority rule of the Bankruptcy Code. This Class is impaired
3 by the Plan.

4 RESPECTFULLY SUBMITTED this 30th day of November, 2017.

6 CARMICHAEL & POWELL, P.C.

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8 By  _____

Donald W. Powell
7301 North 16th Street, #103
Phoenix, Arizona 85020
Attorneys for Debtor

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