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

In re:

DAVID ZOWINE and KARINA ZOWINE

Debtors.

Chapter 11 Proceedings

Case No. 2:16-bk-8963-PS

**DISCLOSURE STATEMENT
CONCERNING DEBTORS' PLAN OF
REORGANIZATION DATED
DECEMBER 2, 2016**

DAVID ZOWINE AND KARINA ZOWINE (collectively the “Debtor”) filed a petition for relief under Chapter 11 of Title 11 of the United States Code (“**Bankruptcy Code**”) on August 4, 2016 (“**Petition Date**”) with the United States Bankruptcy Court for the District of Arizona (“**Bankruptcy Court**”). The Debtors remain in possession of their property and continue to operate their financial affairs as debtors-in-possession in accordance with Bankruptcy Code Sections 1107 and 1108.

The Debtors have prepared this Disclosure Statement (“Disclosure Statement”) in connection with the solicitation of acceptances for the Plan of Reorganization Proposed by Debtors dated December 2, 2016 (“**Plan**”). A copy of the Plan is attached as “**Exhibit 1**” to this Disclosure Statement and is incorporated herein by this reference. The Debtors are the Proponents of the Plan.

Capitalized terms used in this Disclosure Statement have the same meanings ascribed to those terms in the Plan and the Bankruptcy Code. Terms defined in this Disclosure Statement that are also defined in the Plan are defined herein solely for convenience, and there is no intent to change the definitions of those terms from the Plan.

1 **Information Regarding the Plan and Disclosure Statement**

2 The object of a Chapter 11 case is the confirmation (i.e., approval by the
3 Bankruptcy Court) of a plan of reorganization. A plan describes in detail (and in language
4 appropriate for a legal contract) the means for satisfying the claims against and interests in
5 a debtor. After a plan has been filed, the holders of such claims and interests are
6 permitted to vote to accept or reject the plan. Before a proponent can solicit acceptances
7 of its plan, however, Section 1125 of the Bankruptcy Code requires the proponent to
8 prepare a disclosure statement containing adequate information of a kind, and in sufficient
9 detail, to enable those parties entitled to vote on the plan to make an informed judgment
10 about the plan and about whether they should accept or reject the plan.

11 The purpose of this Disclosure Statement is to provide the Debtors' Creditors with
12 adequate information to make an informed judgment about the Plan. This information
13 includes, among other matters, a brief history of the Debtors, a summary of their
14 Chapter 11 Case, a description of the Debtors' assets and liabilities, a description of the
15 terms under which the Debtors' assets will be administered in accordance with the Plan,
16 and an explanation of how the Plan will function.

17 It is important that Creditors read and carefully consider this Disclosure Statement
18 and the Plan, and that such Creditors vote promptly on the acceptance of the Plan.

19 **YOU SHOULD READ THIS DISCLOSURE STATEMENT IN ITS
20 ENTIRETY BEFORE VOTING ON THE PLAN. THIS DISCLOSURE
21 STATEMENT SUMMARIZES CERTAIN TERMS OF THE PLAN, BUT THE
22 PLAN ITSELF IS THE GOVERNING DOCUMENT. IF ANY INCONSISTENCY
23 EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE
24 TERMS OF THE PLAN CONTROL.**

25 **IF YOU HAVE QUESTIONS CONCERNING YOUR TREATMENT
26 UNDER THE PLAN, PLEASE CONTACT COUNSEL TO THE DEBTOR,
27 MICHAEL W. CARMEL, MICHAEL W. CARMEL, LTD., 80 EAST COLUMBUS
28 AVENUE, PHOENIX, ARIZONA 85012, TELEPHONE NUMBER (602) 264-4965,
FAX NUMBER (602) 277-0144, E-MAIL: MICHAEL@MCARMELLAW.COM.**

29 **A SUMMARY DESCRIPTION OF THE CLASSIFICATION OF THE
30 CLAIMS AND THE TREATMENT PROPOSED UNDER THE PLAN ARE
31 CONTAINED UNDER CLASSIFICATION AND TREATMENT UNDER THE
32 PLAN BEGINNING ON PAGE 4.**

33 **THE PROPONENTS RESERVE THE RIGHT TO AMEND, MODIFY, OR
34 SUPPLEMENT THE PLAN AT ANY TIME BEFORE THE CONFIRMATION OF
35 THE PLAN, PROVIDED THAT SUCH AMENDMENTS OR MODIFICATIONS
36 DO NOT MATERIALLY ALTER THE TREATMENT OF, OR DISTRIBUTIONS
37 TO, CREDITORS UNDER THE PLAN.**

38 **THE FINANCIAL PROJECTIONS CONTAINED IN THIS DISCLOSURE
STATEMENT REPRESENT THE DEBTOR'S ESTIMATES OF FUTURE
EVENTS BASED ON CERTAIN ASSUMPTIONS MORE FULLY DESCRIBED
BELOW, SOME OR ALL OF WHICH MAY NOT BE REALIZED. NONE OF
THE FINANCIAL ANALYSES CONTAINED IN THIS DISCLOSURE
STATEMENT ARE CONSIDERED TO BE A FORECAST OR PROJECTION AS
TECHNICALLY DEFINED BY THE AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS. THE USE OF THE WORDS, "FORECAST,"
"PROJECT", OR "PROJECTION" WITHIN THIS DISCLOSURE STATEMENT**

1 RELATE TO THE BROAD EXPECTATIONS OF FUTURE EVENTS OR
2 MARKET CONDITIONS AND QUANTIFICATIONS OF THE POTENTIAL
RESULTS OF OPERATIONS UNDER THOSE CONDITIONS.

3 ALL FINANCIAL INFORMATION PRESENTED IN THIS DISCLOSURE
4 STATEMENT WAS PREPARED BY THE DEBTOR. EACH CREDITOR IS
5 URGED TO REVIEW THE PLAN IN FULL BEFORE VOTING ON THE PLAN
TO ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS
DISCLOSURE STATEMENT.

6 THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE
7 OF CREDITORS, EQUITY HOLDERS AND OTHER PARTIES-IN-INTEREST,
8 AND FOR THE SOLE PURPOSE OF ASSISTING THEM IN MAKING AN
9 INFORMED DECISION ABOUT THE PLAN. NO PERSON HAS BEEN
10 AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY
11 REPRESENTATIONS IN CONJUNCTION WITH THE SOLICITATION OF
VOTES TO ACCEPT OR REJECT THE PLAN OTHER THAN THE
INFORMATION AND REPRESENTATIONS CONTAINED IN THIS
DISCLOSURE STATEMENT OR IN THE BALLOTS. IF GIVEN OR MADE,
ANY SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED
UPON AS HAVING BEEN AUTHORIZED BY THE DEBTOR.

12 THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY
13 THE BANKRUPTCY COURT. THE BANKRUPTCY COURT WILL CONSIDER
14 ANY OBJECTIONS TO AND DETERMINE THE LEGAL ADEQUACY OF THIS
15 DISCLOSURE STATEMENT IN CONJUNCTION WITH CONFIRMATION OF
16 THE PLAN. APPROVAL OF THE LEGAL ADEQUACY OF THIS DISCLOSURE
STATEMENT BY THE BANKRUPTCY COURT IS NOT A CERTIFICATION BY
THE BANKRUPTCY COURT AS TO THE TRUTH OR ACCURACY OF THE
FACTUAL MATTERS THAT ARE CONTAINED IN THIS DISCLOSURE
STATEMENT.

17 THE DEBTOR STRONGLY URGES YOU TO VOTE FOR THE PLAN AS
18 IT BELIEVES THAT THE PLAN WILL PROVIDE FOR A SIGNIFICANTLY
19 LARGER DISTRIBUTION TO HOLDERS OF CLAIMS THAN WOULD
20 OTHERWISE RESULT IF AN ALTERNATIVE RESTRUCTURING PLAN
WERE PROPOSED OR THE DEBTOR'S ASSETS WERE LIQUIDATED UNDER
CHAPTER 7 OF THE BANKRUPTCY CODE.

21 This Disclosure Statement has not been subject to a certified audit but has been
22 prepared in part from the information compiled by the Debtors from records maintained
23 by it in the ordinary course of business or from information received by the Debtors from
third parties. Every effort has been made to be as accurate as possible in the preparation
of this Disclosure Statement.

24 Other than as stated in this Disclosure Statement, the Debtors have not authorized
25 any representations or assurances concerning the Debtors, their operations, or the value of
26 assets. Therefore, in deciding whether to accept or reject the Plan, you should not rely on
27 any information relating to the Debtors or the Plan other than that contained in this
Disclosure statement or in the Plan itself. You should report any unauthorized
representations or inducements to counsel for the Debtors, who may present such
information to the Bankruptcy Court for action as may be appropriate.

1 This is a solicitation by the Debtors only and is not a solicitation by any affiliates,
2 attorneys, agents, financial advisors, accountants, or any other professionals employed by
the Debtors.

3 David Zowine is the individual who has provided the primary information
4 contained in this Disclosure Statement.

5 HISTORY

6 SUMMARY OF CLASSIFICATION AND TREATMENT UNDER THE PLAN

7 Set forth in the following section is a summary of the classification and treatment
8 of Claims under the Plan. Creditors are referred to Article I of the Plan for an explanation
of all Defined Terms.

9 The Classes of Claims against the Debtors shall be treated under the Plan as follows:

10 **CLASS 1 – ADMINISTRATIVE CLAIMS**

11 *Claims for Professional Fees.* Each Person seeking an award by the Bankruptcy
12 Court of Professional Fees: (a) must file its final application for allowance of
13 compensation for services rendered and reimbursement of expenses incurred through the
Confirmation Date within thirty days after the Confirmation Date; and (b) if the
Bankruptcy Court grants such an award, each such Person must be paid in full in Cash in
such amounts as are allowed by the Bankruptcy Court as soon thereafter as practicable.

14 *Post-Confirmation Professional Fees.* All Professional Fees for services rendered
15 in connection with the Chapter 11 Case and the Plan after the Confirmation Date,
16 including those relating to the prosecution of Litigation Claims preserved under the Plan
and the resolution of Disputed Claims, are to be paid by the Debtor upon receipt of an
17 invoice for such services, or on such other terms to which Debtor may agree, without the
need for further Bankruptcy Court authorization or entry of a Final Order. The Debtor
18 shall have ten days after the receipt of any such invoice to object to any item contained in
such invoice. If the Debtor and any Professional cannot agree on the amount of post-
19 Confirmation Date fees and expenses to be paid to such Professional, such amount is to be
determined.

20 **CLASS 2 – FISCHER SECURED CLAIM.**

21 (a) Impairment and Voting. Class 2 is impaired by the Plan. The holder of the
22 Class Claim is entitled to vote on the Plan.

23 (b) Nature of Interest. The holder of the Class 2 Claim holds a secured claim in the
24 amount of \$1,211,600.00. The collateral for this debt is a first position lien on the
Debtors' Residence. Fischer will retain his on the collateral until paid in full.

25 (c) Treatment Interest payments to Fischer will be modified to an annual payment
26 of \$91,000 per year. The first payment will be made ninety (90) days after the Effective
Date. The Class 2 Claim will be paid in full.

27 **CLASS 3 – Wichansky DISPUTED CLAIM**

28 (a) Impairment and Voting. Class 3 is impaired by the Plan, and entitled to vote

1 (b) Nature of Interest. The Wichansky Disputed Claim (as defined in Section 1.73
2 of the Plan) consists of (1) the District Court Judgment, other than the Wichansky
3 Disputed Punitive Damages Claim; minus (2) offsets against the District Court Judgment
4 based on the State Court Judgment. The offsets under the State Court Judgment include
5 (a) sums Wichansky owes to Zowine for attorneys' fees Wichansky paid to his private
6 counsel out of ZHC coffers, (b) one-half of the sum paid by ZHC to the Receiver
7 appointed by the State Court, (c) \$344,000 drawn by Wichansky from ZHC before
8 January 25, 2011 in excess of sums drawn by Zowine, (d) sums Wichansky owes to
9 Zowine for pre-March 23, 2012 contingent liabilities of ZHC (and expenses to defend
against, resolve, or settle such liabilities), (e) sums Zowine pays to Wichansky under the
State Court Judgment, and (f) sums Wichansky is held to owe Zowine based on Zowine's
state law breach of fiduciary duty claims pending in State Court. The Debtors deny any
liability on the Wichansky Disputed Claim.

10 (c) Treatment. The Class 3 creditor will not receive any current distributions on
11 account of the disputed Class 3 Claim, until the Wichansky Claim Resolution Date. Until
12 the Wichansky Claim Resolution Date, the Plan Sponsor shall make contributions on a
13 calendar quarterly basis (January 1, April 1, July 1, and October 1 of each year) to the
14 Disputed Claim Account: (a) at the rate of \$200,000 per quarter for the first eight (8)
15 quarters; thereafter at the rate of \$225,000 per quarter for the next eight (8) quarters;
16 thereafter at the rate of \$250,000 per quarter for the next eight (8) quarters; thereafter at
17 the rate of \$275,000 per quarter for the next eight (8) quarters; thereafter at the rate of
18 \$300,000 for the next eight (8) quarters, for a total of Ten Million Dollars (\$10,000,000)
19 over forty (40) quarters; plus (b) simple interest at the federal judgment rate of interest,
20 (currently at .0068% (68 Basis points)). Upon the occurrence of the Wichansky Claim
21 Resolution Date, the amount of the Class 3 Claim as allowed, will be paid as follows: (x)
22 the amounts in the Disputed Claims Account (including any interest accrual therefrom);
23 and (y) the balance (if any) to be paid under the remainder of the amortization set forth in
24 sub item (a) of this subsection, with the balance due, in full, on the tenth (10th) anniversary
25 of the Plan Effective Date.

26 The first payment set forth in subsection (a) will be made on the first calendar
27 payment following the Effective Date. By way of example only, if the Effective Date is
28 June 20, the first quarterly payment will be made on July 1. If the Effective Date is July
2, the first payment will be made on October 1.

23 **CLASS 4 – KZAD SECURED CLAIM**

24 (a) Impairment and Voting. Class 4 is unimpaired by the Plan. The holder of the
25 Class 4 Claim is therefore deemed to have accepted the Plan.

26 (b) Nature of Interest. The holder of the Class 4 Claim asserts a secured claim in
27 the approximate amount of \$1,500,000.00. KZAD holds a first position lien on property
28 located at 121 Alvern Court, Alamo California 94507.

1 (c) Treatment. The holder of the Class 4 Claim shall receive payment, in full of its
2 Allowed Claim in accordance with the agreement with the Debtors.

3 **CLASS 5-WELLS FARGO SECURED CLAIM**

4 (a) Impairment and Voting. Class 5 is impaired, and is therefore entitled to vote
5 on the Plan.

6 (b) Nature of Interest. Wells Fargo holds a secured claim against a 2007 Bentley
7 GTC in the approximate amount of \$20,000.00.

8 (c) Treatment. The holder of the Class 5 Claim shall receive payment in full. The
9 interest rate shall be modified to five percent (5%) per annum, and payments will be made
10 on a monthly basis for twenty-four (24) months. The first payment will be made thirty
11 (30) days after the Effective Date.

12 **CLASS 6 –SPECIAL COUNSEL CLAIMS.**

13 (a) Impairment and Voting. Class 6 is impaired by the Plan, and therefore entitled
14 to vote. The holders of the Class 6 Claims are two (2) of the Debtors' court-approved
15 Special Counsel. Their claims aggregate approximately \$229,000.00.

16 (b) Nature of Interest. Class 6 is unsecured.

17 (c) Treatment. The Class 6 Claims will be paid in full. Class 6 will receive no
18 interest on account of the unpaid amounts, and will receive four (4) equal quarterly
19 payments, the first of which will be sixty (60) days after the effective Date.

20 **CLASS 7-ALLIANCE GUARANTY CLAIM**

21 (a) Impairment and Voting. Class 7 is impaired by the Plan and therefore entitled
22 to vote.

23 (b) Nature of Interest. Alliance holds a guaranty signed by the Debtors of ZHC
24 Debt in the approximate amount of \$10,094,000.00.

25 (c) Treatment. The Class 7 Creditor will not receive any current distributions on
26 account of its claim, but will retain all rights under the existing Alliance Guaranty. The
27 Alliance Loan Documents and Alliance Guaranty will be modified to allow for any
28 additional distributions to be made to the Debtors not otherwise authorized by the
Alliance Loan Documents in order to permit the Plan Sponsor to assist in the funding of
the Plan Payments. Nothing in the Plan is intended to, nor should it be construed as,
altering, amending or prejudicing any rights of Alliance with respect to the ZHC Debt.

CLASS 8-CLAIMS HELD BY THE GUARANTY CREDITORS

(a) Impairment and Voting. Class 8 is impaired by the Plan and therefore entitled
to vote.

(b) Nature of Interest. The Guaranty Creditors hold guarantees signed by the
Debtors of ZHC Debt in the approximate amount of \$586,414.00.

1 (c) Treatment. The Class 8 Creditors will not receive any current distributions on
2 account of their claims, but will retain all rights under their respective existing guarantees.
3 Nothing in the Plan is intended to, nor should it be construed as, altering, amending or
4 prejudicing any rights of Guaranty Creditors with respect to the ZHC Debt.

5 **CLASS 9-VECTOR LITIGATION CLAIM**

6 (a) Impairment and Voting. Class 9 is impaired by the Plan, and therefore entitled
7 to vote.

8 (b) Nature of Interest. Vector is a Plaintiff in the Vector litigation. It currently
9 holds an unliquidated claim. The Debtors dispute the claim in its entirety.

10 (c) Treatment. Class 9 will receive payment in full of the amount of its allowed
11 claim, when such claim is determined. Payment will be made in two (2) equal annual
12 payments, with interest at the federal judgment rate, the first of which will be made thirty
13 (30) days after the claim becomes an Allowed Claim.

14 **CLASS 10 – GENERAL UNSECURED CLAIMS.**

15 (a) Impairment and Voting. Class 10 is impaired by the Plan, and therefore
16 entitled to vote.

17 (b) Distributions. Each holder of a Class 10 General Unsecured Claim shall
18 receive 100% of their allowed general unsecured claim over three (3) years, paid
19 quarterly. The first payment will be made ninety (90) days after the Effective Date.

20 **CLASS 11-WICHANSKY DISPUTED PUNITIVE DAMAGES CLAIM.**

21 (a) Impairment and Voting. Class 11 is impaired by the Plan, and therefore
22 entitled to vote.

23 (b) Nature of Interest. This Class is subordinated to all other Classes of Creditors,
24 pursuant to 11 U.S.C. Section 726 (a) (4). The Debtors dispute the claim in its entirety.

25 (c) Treatment. Class 11 will receive full payment of the amount of its allowed
26 claim, with interest at the Federal Judgment Rate of interest (.68% per annum) only after
27 full payment pursuant to the Plan has been made to all other creditors. Payment will be no
28 sooner than the tenth (10th) Anniversary of the Effective Date.

29 **DESCRIPTION OF THE PLAN OF REORGANIZATION**

30 As noted, a copy of the Plan accompanies this Disclosure Statement as **Exhibit 1**.

31 The following summary of the material provisions of the Plan is qualified in its
32 entirety by the specific provisions of the Plan, including the Plan's definitions of certain
33 terms used below. The following is intended to provide a general description of the Plan.
34 For more specific information, please refer to the Plan itself. The Debtor has attempted to
35 minimize the use of defined terms in describing the Plan. However, any capitalized terms
36 that are not defined in this section of the Disclosure Statement are defined in the Plan.

37 **Voting and Confirmation Procedures**

1 This Disclosure Statement is accompanied by copies of the following: (a) the
2 Amended Plan, attached as Exhibit 1 to this Disclosure Statement; (b) the Bankruptcy
3 Court's Order: (1) Setting Hearing on Approval of Adequacy of Disclosure Statement and
4 Plan Confirmation; (2) Setting Objection Deadlines thereon; (3) Setting Record Date; (4)
5 Approving Ballots and Solicitation Protocol; (5) Setting Ballot Deadlines; and (6) Related
6 Matters (the "Solicitation Order"); and (c) a Ballot to accept or reject the Plan.

7 Appropriate forms of Ballots must be used.

8 **Who May Vote**

9 Under the Bankruptcy Code, impaired Classes of Claims are entitled to vote to
10 accept or reject a plan of reorganization. A Class that is not impaired under a plan is
11 deemed to have accepted a plan and does not vote. A Class is impaired under the
12 Bankruptcy Code when the legal, equitable, and contractual rights of the holders of
13 Claims or Equity Interests in that Class are modified or altered. **For purposes of this
14 Plan, holders of Claims in Classes 2, 3, 5, 6, 7, 8, 9, and 10 are entitled to vote on the
15 Plan.**

16 If, however, the Debtors file an objection to your claim, you are responsible to
17 request that the Bankruptcy Court temporarily allow your claim for voting purposes. Rule
18 3018 of the Federal Rules of Bankruptcy Procedure provides that the Bankruptcy Court
19 after notice and hearing may temporarily allow the Claim in an amount which the
20 Bankruptcy Court deems proper for the purpose of voting. If the Debtor files an objection
21 to your claim, you should seek an attorney's assistance with respect to this matter.

22 **Voting Instructions**

23 All votes to accept or reject the Plan must be cast by using the appropriate form of
24 Ballot enclosed with this Disclosure Statement. Only votes using such Ballots will be
25 counted, except to the extent the Bankruptcy Court orders otherwise.

26 **For your vote to count, your Ballot must be properly completed according to
27 the voting instructions on the Ballot and received no later than the Voting Deadline
28 by the Debtor's counsel. Any Ballot not indicating an acceptance or rejection will be
deemed an acceptance of the Plan.**

If you have any questions concerning the Plan, please contact:

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Phoenix, Arizona 85012
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Facsimile: (602) 277-0144
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29 **Acceptance or Rejection of the Plan**

30 Under the Bankruptcy Code, a Class of Claims entitled to vote is deemed to have
31 accepted the Plan if it is accepted by creditors in such Class who, of those actually voting
32 on the Plan, hold at least two-thirds in amount and more than one-half in number of the
33 Allowed Claims of such Class.

34 **Confirmation Hearing; Objections**

1 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after
2 notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides
3 that any party-in-interest may object to Confirmation of the Plan. Under Section 1128 of
4 the Bankruptcy Code and Rule 3017(c) of the Bankruptcy Rules, the Bankruptcy Court
5 has scheduled the Confirmation Hearing before the Honorable Paul Sala, United States
6 Bankruptcy Judge, at the United States Bankruptcy Court, District of Arizona, 230 North
7 First Avenue, 6th Floor, Phoenix, Arizona 85004 for **[to be inserted after approval of
8 the Disclosure Statement]** The Solicitation Order setting forth the time and date of the
9 Confirmation Hearing has been included along with this Disclosure Statement. Pursuant
10 to the Solicitation Order, the Confirmation Hearing has been set to consider the adequacy
11 of this Disclosure Statement, as well as to consider Confirmation of the Plan. The
12 Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court
13 without further notice, except for an announcement of such adjourned hearing date by the
14 Bankruptcy Court in open court at such hearing.

15 Any objection to the adequacy of this Disclosure Statement or to Confirmation of
16 the Plan must be in writing, must comply with the Bankruptcy Rules and the Local Rules
17 of the Bankruptcy Court, and must be filed and served by **5:00 p.m. (Mountain Standard
18 Time)** on the date as required in the Solicitation Order.

19 **GENERAL BACKGROUND OF THE DEBTOR AND EVENTS LEADING TO**
20 **BANKRUPTCY FILING**

21 **A. Relationship Between Zowine and Wichansky**

22 Wichansky and David Zowine (“Zowine”) were each 50% shareholders of Zoe
23 Holding Company, Inc. (f/k/a ZHC Holding Company) (“ZHC”) through
24 March 26, 2012 when David Zowine purchased Wichansky’s 50% interest as
25 the result of a court ordered dissolution of the Company. Since that date,
26 Zowine has been the sole shareholder of ZHC.

27 Zowine and Wichansky at one time were close personal friends and business
28 associates with each owing 50% of ZHC. Wichansky served as ZHC’s President and
Zowine as its Vice President, although all major decisions were made together. Their
relationship began to deteriorate toward the end of 2010, and in early 2011, Wichansky set
on a scheme to oust Zowine from ZHC and buy out his interest for pennies on the dollar.
Zowine and Wichansky have been involved in multiple lawsuits against each other ever
since.

1 1. Wichansky Tries to Fire Zowine, Buy His Interest in ZHC and Also Sues
2 Him.

3
4 On January 25, 2011, Wichansky purported to fire Zowine from his employment at
5 ZHC, and on January 26, 2011, Wichansky (and ZHC at Wichansky's behest), using an
6 attorney hired solely by Wichansky, initiated a lawsuit against Zowine in Maricopa
7 County Superior Court, Cause No. CV2011-002120 (the "State Case"). Wichansky and
8 ZHC sought a declaration that Wichansky's termination of Mr. Zowine was proper and
9 they sought an injunction against Mr. Zowine to keep him from showing up at ZHC's
10 offices.

11
12 On February 1, 2011, Wichansky attempted to purchase all of Mr. Zowine's
13 interest in ZHC by exercising purported rights under a cross purchase agreement
14 Wichansky and Zowine had entered into on or about September 9, 2002. Wichansky
15 asserted that he had the right to purchase Zowine's interest in ZHC under the terms of the
16 Cross Purchase Agreement because Zowine was no longer an employee of ZHC (having
17 been terminated by Wichansky the prior week). Wichansky tendered \$950,000 in a
18 cashier's check and a \$950,000 promissory note to Zowine. Zowine rejected the tender.
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21 2. Zowine Counterclaims and Seeks to Disqualify Wichansky's Counsel.

22 Zowine answered Wichansky's complaint and filed a counterclaim against
23 Wichansky on February 4, 2011.¹ Zowine also moved to disqualify Wichansky's counsel,
24 since counsel purported to represent ZHC and Wichansky, and Zowine had not approved
25

26
27 ¹ Wichansky caused Zoe to file an amended complaint against Zowine just hours before
28 Zowine filed his answer and counterclaim. The amended complaint removed Wichansky
 as a plaintiff, but Wichansky was named as a counterdefendant in Zowine's
 counterclaim.

1 the hiring of counsel. Zowine's counterclaim alleged, among other things, Wichansky's
2 breach of fiduciary duty, fraud, constructive fraud, breach of contract, and breach of the
3 covenant of good faith and fair dealing.
4

5 3. The Court Rejects Wichansky's Firing of Zowine and Disqualifies His
6 Lawyer. Wichansky Promptly Petitions to Dissolve the Company.

7 The Superior Court held a hearing on Wichansky's injunction application on
8 March 30, 2011. At the conclusion of the hearing, the Court indicated that it would likely
9 find that Wichansky did not have the authority to terminate Zowine's employment with
10 ZHC. On March 31, 2011, before the court issued its order, Wichansky replied to
11 Zowine's counterclaim, filed a petition to dissolve ZHC, and moved for the appointment
12 of a receiver for ZHC. The following day, the Court ruled as it indicated it would rule and
13 denied Mr. Wichansky's application for a preliminary injunction. The court also granted
14 Mr. Zowine's motion to disqualify Wichansky's counsel.
15

16 Wichansky's filing of the petition for dissolution gave Zowine the option to
17 purchase Mr. Wichansky's 50% interest in ZHC under A.R.S. § 10-1434. Mr. Zowine
18 filed his notice of election under section 10-1434 on June 10, 2011. The Superior Court
19 then scheduled a fair value hearing for August 29, 2011.
20

21 4. Wichansky Tries to Scuttle Dissolution but the Court Denies His Motions.

22 Shortly after the Court scheduled the fair value hearing, in early August 2011,
23 Wichansky filed motions to, among other things, withdraw his petition for dissolution, set
24 aside Zowine's election to purchase his interest in ZHC, and to stay proceedings related to
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1 dissolution of ZHC. Wichansky also sought to file an amended complaint asserting
2 claims against Zowine for, among other things, breach of fiduciary duty.

3
4 The court denied Wichansky's motions to withdraw his petition for dissolution and
5 to set aside Zowine's election under A.R.S. § 10-1434, but the Court continued the fair
6 value hearing to February 27, 2012. In denying Wichansky's motion to withdraw his
7 petition for dissolution, the Court stated on the record:

8
9 Well, you know, my consideration is that there's been
10 information relating to equities that have been presented by both
11 sides. The Plaintiffs, through their amended complaint and all the
12 attachments, have the greater weight if we were to photocopy it and
13 put it on a table. The greater number of articulated pieces of
information, relating particularly to the billing issue, and the
allegations that stem in their complaint from that. I've considered
that information. I've also considered, you know, which legal
standard really applies, and honestly, to me it doesn't matter.

14 I don't feel I have to make that determination. I'll give the
15 Plaintiffs the benefit of the doubt, and give them the more generous
interpretation under 10-1434(a), that I'm just to look at the equities
from everybody's point of view.

16 And when I look at the equities from everybody's point of
17 view, I did see somebody who had competent -- appeared to me,
18 competent, sophisticated, legal counsel representing him at a time
19 when he engaged in a course of action to not only fire somebody, but
20 then proceed into Court, and then proceed to file an action for
21 dissolution. And having done that, there are consequences to that.
22 The law says somebody else gets to elect to do something if they
23 choose to, and it can only be set aside if there's equitable grounds,
24 and I'm not finding that there's sufficient equitable grounds to set it
25 aside. Any of it. As I said, I don't think returning these parties to the
26 status quo of having nothing pending, except lawsuits for breaches of
27 fiduciary duty against one another and the related claims is an
28 equitable thing to do. To me, it's a nonsensical thing to do.

And so when I point that out, then I'm told, well, Judge, you've
got the discretion to just do half of what we asked for, which is to set
aside the election that somebody else made. That he didn't make, that
somebody else made, somebody else had had to agonize over and
make the decision whether to go through that or not, and figure out
how to come and to do it or not. And I'm not going to go there. So
I'm going to deny the Plaintiff's request for setting aside the
dissolution, and I'm going to deny the request for setting aside the
Defendant's election to purchase shares in lieu of dissolution.

1 8/30/2011 Transcript of Proceeding, p. 39:3-40:18.

2 The Court also granted Wichansky's motion to file an amended complaint, but
3 Wichansky never filed his amended complaint notwithstanding permission to do so.
4

5 5. The Fair Value Hearing and Judgment.

6 The fair value hearing proceeded before the Honorable Robert Oberbillig for four
7 days beginning on February 27, 2012. After hearing the evidence, including the testimony
8 of business valuation experts retained by both Zowine and Wichansky, the court
9 concluded the Fair Value of ZHC was \$10,000,000 and that Mr. Wichansky was entitled
10 to receive \$5,000,000 for his 50% interest in ZHC, subject to several offsets.
11

12 First, the Court offset the amount to be paid to Wichansky by \$98,000, the amount
13 Wichansky had paid his personal lawyer from ZHC funds after the court had disqualified
14 the lawyer. Second, the Court offset the amount to be paid to Wichansky by roughly one-
15 half of the amount paid to the court-appointed Management Consultant² from funds of
16 ZHC after the valuation date, \$500,000. Third, the Court offset the amount to be paid to
17 Wichansky by \$344,000, the amount Wichansky had historically drawn from ZHC coffers
18 in excess of the amount drawn by Zowine. The Court ordered Zowine to pay Wichansky
19 the net amount of \$4,058,000.
20
21

22 The court also found that Wichansky was liable for one-half of the contingent
23 liabilities of ZHC (and its subsidiaries) arising from events that occurred before March 23,
24 2012, including but not limited to all costs and expenses incurred by Mr. Zowine, the
25
26
27

28 ² The State Court appointed Ted Burr as a Management Consultant on April 12, 2011. His appointment was terminated by Court Order on July 23, 2012.

1 Company or any subsidiary on or after March 23, 2012, to defend against, settle and
2 resolve such contingent liabilities.

3
4 The court entered a judgment on its fair value order and transferred ownership of
5 Mr. Wichansky's interest in ZHC to Mr. Zowine. The judgment included provisions
6 permitting Mr. Zowine to pay Mr. Wichansky over time, establishing a procedure
7 pursuant to which Mr. Zowine could charge Mr. Wichansky for Wichansky's share of
8 ZHC's contingent liabilities, and procedures for resolving any dispute between the parties
9 over responsibility for contingent liabilities.
10

11 6. Wichansky's State Court Appeal and Federal Court Action.

12 The judgment included Rule 54(b) language, and Wichansky filed a timely notice
13 of appeal. He subsequently moved to stay the remaining trial court proceedings in the
14 State Case pending the outcome of the appeal. The court granted the motion to stay.
15

16 While the state court appeal was pending and while the stay of proceedings was
17 effective, in June 2013, Wichansky initiated another action in the United States District
18 Court for the District of Arizona, Cause No. 2:13-cv-01208-DGC (the "Federal Case").
19 The complaint in the Federal Case included numerous federal law claims and numerous
20 pendent state law claims. The Federal Case ultimately resulted in a judgment against the
21 Debtors in the amount of \$20,622,800.
22

23
24 The Debtors were unable to obtain a supersedeas bond to stay execution of the
25 judgment pending appeal, and on August 4, 2016, Wichansky sought to obtain writs of
26 garnishment permitting him to obtain Zowine's stock in ZHC as well as all funds
27 belonging to the Debtors on deposit at Wells Fargo Bank. Faced with the garnishments
28

1 and the inability to post a supersedeas bond, the Debtors initiated their bankruptcy
2 proceeding.

3
4 Zowine filed two motions to dismiss the Federal Case focusing on the federal
5 claims asserted by Wichansky. The court granted the first motion to dismiss in its
6 entirety, but granted Wichansky leave to amend his complaint. The only federal claims
7 remaining in the Federal Case after Wichansky filed his amended complaint were claims
8 asserted under the Computer Fraud and Abuse Act, Zowine moved to dismiss those
9 claims again in his second motion to dismiss, and that motion was granted in part.
10
11 Zowine then moved for summary judgment on the remaining CFAA claims which motion
12 was granted. Zowine later moved for summary judgment on the remaining state law
13 claims and that motion was granted in part as well. After motion practice, the only claims
14 remaining in the Federal Case were state law claims against Zowine for assault and
15 battery and breach of fiduciary duty and aiding and abetting claims against employees of
16 ZHC. The court repeatedly declined to remand the state law claims to state court.³

17
18
19 The Federal Case proceeded to trial on the state law claims in April 2016. The jury
20 returned a verdict in favor of Mr. Wichansky and against Mr. Zowine and awarded Mr.
21 Wichansky \$10,311,400 in compensatory damages and \$14,375,000 in punitive damages.⁴

22
23
24 ³ Wichansky and Zowine are involved in two other actions. First, Wichansky filed a *qui*
25 *tam* action against Zowine and Zoe in the United States District Court for the District of
26 Arizona, Cause No. 2:13-cv-01924-SRB (Qui Tam Action"). The Court dismissed the *Qui*
27 *Tam* Action and that case is now on appeal in the Ninth Circuit Court of Appeals. Second,
28 Zoe filed an unfair competition action against Wichansky's new employer, Home Health
Agency – Arizona, Inc., dba Team Select Home Care and others, Maricopa County
Superior Court Cause No. CV2013-001150. Wichansky is currently named as a defendant
in the Team Select Case. The Team Select Case is described in detail below.

⁴ The jury also found that certain co-defendants had aided and abetted Mr. Zowine's
breach of fiduciary duty and awarded damages against those co-defendants. None of

1 The Debtors filed a motion for a new trial and a motion for judgment as a matter of law
2 which was granted in part and denied in part. In its order on these motions, the Court
3 remitted the punitive damages award against the debtors to \$10,311,400 resulting in a
4 total judgment against the debtors in the amount of \$20,622,800. On November 4, 2016,
5 the debtors filed a notice of appeal.
6

7 7. The State Case Appeal is Dismissed and Wichansky Tries to Pursue
8 Additional Claims in State Court.
9

10 In the meantime, on November 19, 2014, the Arizona Court of Appeals dismissed
11 the State Case appeal based on its conclusion that the judgment was not appealable and
12 the court of appeals lacked jurisdiction. Wichansky petitioned the Arizona Supreme
13 Court to review the Court of Appeals order, but the Court denied the petition for review.
14

15 The court of appeals notified the trial court of its dismissal order on June 18, 2015,
16 and shortly thereafter the case began to proceed forward along with the Federal Case. In
17 January 2016, Wichansky filed an amended cross claim against the Debtors and ZHC in
18 the State Case asserting claims for indemnification, breach of contract, abuse of process,
19 accounting, tortious interference with existing contractual relations, and breach of the duty
20 of good faith and fair dealing. The Debtors and the Company filed a motion to dismiss the
21 cross claim on February 18, 2016. The court has issued a minute entry stating that it
22 intends to schedule oral argument on the motion to dismiss in due course.
23
24

25 8. Wichansky Contests Zowine Assertion of Contingent Liability Claims.
26
27

28 the co-defendants are implicated by the Debtor's bankruptcy, so this disclosure
statement does not address the claims asserted against those parties.

1 Also pending in the State Case is Wichansky's motion challenging Mr. Zowine's
2 assertion of contingent liability claims against Wichansky. Since entry of the Court's fair
3 value order and Judgment, Zowine followed the procedures set forth in the Judgment for
4 resolving Wichansky's responsibility for contingent liabilities and has charged Wichansky
5 a total of \$1,807,490.65 for his share of contingent liabilities.⁵ To date, Zowine has made
6 four demands for payment to Wichansky: \$545,885 demanded in 2013 (which amount
7 was later reduced to \$471,157.10); \$552,673.86 demanded in 2014; \$96,416.15 demanded
8 in 2015; and \$687,243.54 demanded in 2016.

11 The Judgment permits Wichansky to contest Zowine's assertion of claims against
12 Wichansky for the Company's contingent liabilities by serving an objection within ten
13 days after service of Zowine's demand. Wichansky timely objected to the 2013, 2014,
14 and 2016 demands, but he did not timely object to the 2015 demand.

16 Wichansky filed a motion in the State Case on January 22, 2016 asking the Court
17 to determine his liability for contingent liabilities and related expenses assessed against
18 him by Zowine in 2013, 2014 and 2015. Wichansky has not filed a motion contesting
19 Zowine's assessment against Wichansky in the amount of \$687,243.54 in 2016.

21 Zowine responded to and opposed Wichansky's motion on March 4, 2016, and the
22 Superior Court held oral argument on Wichansky's motion on July 8, 2016. Following
23

24 ⁵ This sum does not include \$500,000 Zowine initially paid into an escrow account for the
25 benefit of Wichansky to be applied to contingent liabilities of Zoe as required by the
26 Judgment. After Mr. Zowine paid this sum into an escrow account for Mr. Wichansky's
27 benefit as required by the Judgment, the funds were transferred to a separate escrow
28 account established for the benefit of Arizona Health Care Cost Containment System
(AHCCCS). Mr. Zowine deposited \$500,000 on his own account into the AHCCCS Escrow
thus resulting in an escrow for the benefit of AHCCCS in the amount of \$1,000,000.
These funds were transferred from the AHCCCS escrow account to AHCCCS in 2013 when
Zoe entered into a settlement with AHCCCS.

1 the oral argument, the court issued an order stating that the court intended to schedule an
2 evidentiary hearing on Wichansky's motion.

3
4 10. Effect of State Case on Federal Case.

5 The Debtors believe the Judgment in the Federal Case is likely to be reversed in its
6 entirety on appeal, but even if it is affirmed, the Debtors at the very least will be entitled
7 to an offset against the Judgment in the Federal case based the following:

8
9 First, the Debtors will be entitled to an offset for the offsets included in the State
10 Court Fair Value Judgment in the amount of nearly \$1,000,000. These offsets include:
11 (a) \$98,000 for payment made by Wichansky from ZHC funds to his private counsel; (b)
12 \$500,000 for Wichansky's share of fees paid by ZHC to the court appointed receiver; and
13 (c) \$344,000 for Wichansky's use of ZHC funds to pay his personal and family expenses.
14

15 Second, the Debtors will be entitled to an offset for Contingent liabilities of the
16 Company (and its subsidiaries) arising from events that occurred before March 23, 2012,
17 plus costs and expenses incurred by Mr. Zowine, the Company or any subsidiary on or
18 after March 23, 2012, to defend against, settle and resolve such contingent liabilities.
19 Until the Superior Court rules otherwise, the value of this offset is at least \$1,807,490.65
20 as noted above.
21

22 Third, the Debtors will be entitled to an offset for any sum Zowine pays to
23 Wichansky toward the purchase price under the State Court Judgment after the date of this
24 disclosure statement. The next scheduled payment in the amount of \$500,000 is due on
25 April 30, 2017 subject to any offset for contingent liabilities of ZHC.
26

27 Fourth, the Debtors will be entitled to an offset for any sum Wichansky is found to owe
28

1 Zowine as a result of Zowine's pending claims in the State Case.

2
3 11. The "Team Select" Case

4 In late 2012 and early 2013, Zowine and ZHC became aware that Wichansky's
5 new employer Team Select, a pediatric home health agency that competes with ZHC
6 subsidiaries MGA Home Healthcare and MGA Home Healthcare Colorado, was soliciting
7 MGA Home Healthcare referral sources. The company also became aware that in addition
8 to hiring Wichansky, Team Select had hired several former ZHC or MGA employees in
9 violation of the restrictive covenants of their employment agreements. Importantly, the
10 company learned that Wichansky and former employee Richard Eden had retained copies
11 of MGA's confidential documents, which contain trade secrets, and were sharing them
12 with Team Select to benefit Team Select's efforts to enter the pediatric home health
13 market, and to make Team Select more competitive with MGA. Wichansky and Eden also
14 used these documents, and their knowledge of MGA, to make a false and malicious report
15 of medical billing fraud by MGA to Arizona's Medicaid agency, AHCCCS, resulting in a
16 suspension of payment to MGA by that agency. This in turn caused a loss of patients,
17 whose families believed that because of the payment suspension they were obliged to seek
18 a new home healthcare agency to provide nursing care for their children. Lastly, the
19 company later learned that Team Select had solicited and hired several MGA nurses and
20 had successfully solicited MGA's patients (some of whom followed their nurses to Team
21 Select).

22 As a result of these acts, in February 2013, ZHC, MGA Home Healthcare, MGA
23 Home Healthcare Colorado, MGA Healthcare Staffing, Inc., and MGA Employee
24 Services, Inc. ("Plaintiffs") filed suit against Team Select, its owner Michael Lovell, and
25 several former ZHC and MGA employees, for breach of contract, breach of covenant of
26 good faith and fair dealing, breach of fiduciary duty, tortious interference, trade secret
27 misappropriation, and unjust enrichment (ZHC Holding Co., Inc. et al. v. Eden, et al, Case
28 No. 2013-cv-001150, Maricopa County Superior Court). At the time of filing, the

1 Plaintiffs sought a temporary restraining order and preliminary injunction to restrain the
2 Defendants' conduct. The parties engaged in limited discovery, and opted to vacate the
3 motion for a temporary restraining order and preliminary injunction. After this limited
4 discovery, Wichansky was also added as a defendant in the case. Plaintiffs originally
5 sought damages in the form of lost profits due to lost patients and expected referrals from
6 those patients (approximately \$1.1 million) and expenses associated with increased nurse
7 salary required to retain a nurse that had been solicited by Team Select (\$6,600.00); after
8 extensive discovery, Plaintiffs added damages in the form of disgorgement of revenue that
9 Team Select earned from MGA's former patients (\$422,592) and the value of the
10 confidential information that Wichansky and Eden misappropriated.

11 Throughout the course of the litigation, Plaintiffs sought discovery regarding the
12 materials that Wichansky took from MGA, including a computer that he had removed
13 from his office in 2011 and failed to return. Wichansky had testified in discovery in
14 connection with the valuation hearing that he had removed the computer, and that it
15 contained extensive MGA files, however, he refused to return it. Ultimately, Wichansky
16 was ordered to return the computer to MGA via a third-party forensic examiner. However,
17 when the forensic examiner inspected the computer, it was discovered that the hard drive
18 was missing. After extensive attempts to obtain the missing hard drive, the company
19 sought spoliation sanctions against Wichansky, and was awarded not only an adverse
20 inference instruction, but also attorneys' fees and costs incurred in efforts to obtain the
21 computer.

22 After the close of discovery in July 2015, the Defendants sought summary
23 judgment on all claims through multiple motions for summary judgment. Defendants
24 argued that Plaintiffs (1) could not prove any damages; (2) could not prove that the
25 confidential information that they sought to protect was, in fact, trade secrets; and (3)
26 could not prove that any of the Defendants had caused Plaintiffs to lose patients. The
27 Court granted Defendants' motion with respect to lost patients, finding that Plaintiffs did
28

1 not have a property interest or an enforceable contract with patients because of a patient's
2 right to freely chose providers—however, the Court found that there remained genuine
3 issues of material fact as to the Plaintiffs' claims and damages.

4 In early 2016, on the eve of the evidentiary hearing on Plaintiffs' spoliation
5 motion, Wichansky disclosed that he possessed a computer that "might" have the data
6 from the missing 2011 computer. He had purchased this "new" computer in 2014. He
7 offered to turn it over to a third party forensic investigator, similar to the procedure
8 ordered for the 2011 Computer. However, Wichansky soon balked and refused to agree
9 upon a protocol for review of the 2014 Computer, forcing Plaintiffs to obtain an order for
10 its turnover. Also, though Wichansky had offered to allow discovery on the 2014
11 Computer, he later rescinded that offer, again forcing Plaintiffs to seek an order securing
12 this discovery. Upon receiving an index of the contents of the 2014 Computer, Plaintiffs
13 learned that Wichansky had extensive MGA data remaining in his possession (despite the
14 loss of the 2011 Computer), and that he had likely withheld evidence in the federal
15 litigation. This discovery into the 2014 Computer and Wichansky's conduct surrounding
16 his failure to disclose the computer when so ordered in 2015, is ongoing, and is expected
17 to close on December 22, 2016. Trial in this case is set to commence on February 6, 2017.

18 19 **Post-Petition Operations**

20 Since the Petition Date, the Debtors have continued to operate their affairs as a
21 "debtor-in-possession" under Sections 1107(a) and 1108 of the Bankruptcy Code. The
22 Debtors have been filing Monthly Operating reports on a regular basis, which reflect the
23 ongoing financial activities. The U.S. Trustee has not appointed an Official Committee of
24 Unsecured Creditors.

25 On August 16, 2016, the Debtors filed a Motion for Relief from Stay (DE #16)
26 seeking an Order permitting litigation with Wichansky to go forward. Wichansky
27 opposed the Motion. The Court conducted a hearing on September 20, 2016 and granted
28 the Motion. An Order was signed on October 5, 2016 (DE #103).

26 **Retention of Professionals**

27 On August 10, 2016, the Bankruptcy Court entered an order authorizing the Debtor
28 to retain Michael W. Carmel, Ltd. as bankruptcy and reorganization counsel. (DE #10).

1 The Court has also entered Orders approving the employment of three (3) separate law
2 firms (DE #94, #95, and #96).

3 **Bar Date for Filing Proofs of Claims**

4 On, November 15, 2016, the Debtors filed a Motion asking the Court to establish a
5 Claims Bar Date of January 4, 2017. The Court has granted that request. A separate
6 mailing has been sent to Creditors. If your claim is listed as disputed, contingent,
7 unliquidated, or unknown, or you disagree with the amount of the listed claim, or whether
8 you are asserting a claim against any alleged assets of the Estate in any adversary
9 proceeding, **YOU MUST HAVE FILED A PROOF OF CLAIM BY JANUARY 4, 2017 IN THIS CASE OR BE FOREVER BARRED FROM RECEIVING A
10 DIVIDEND FROM THE ESTATE.**

11 **A copy of the Claims Register is attached as Exhibit 2.** At a minimum, the
12 Debtors will be filing an Objection to each of the claims filed by Wichansky.

13 **Debtor's Assets**

14 The Debtors' Bankruptcy Schedules reflect assets as of the time of filing in the
15 approximate amount of \$219,000,000.00. The liquidation analysis attached to this
16 Statement reflects the current value of the debtor's assets.

17 The Debtors' Bankruptcy Schedules reflect liabilities of approximately
18 \$39,000,000.00.

19 **Brief Explanation of Chapter 11 Reorganization**

20 The Debtors are being reorganized pursuant to the Plan that is proposed under
21 Chapter 11 of the Bankruptcy Code ("Chapter 11"). Under Chapter 11, a debtor is
22 authorized to reorganize its financial affairs for the benefit of itself, its creditors and
23 equity holders. Confirmation of a Plan of Reorganization is the principal objective of a
24 Chapter 11 case.

25 In general, a Chapter 11 Plan of Reorganization (a) divides Claims into separate
26 Classes; (b) specifies the property that each Class is to receive under the Plan; and
27 c) contains other provisions necessary to the reorganization of the Debtor. A Chapter 11
28 Plan of Reorganization may provide that certain Classes of Claims are either: (i) to be
29 paid in full upon the effective date of the plan; (ii) reinstated; or (iii) their legal, equitable
30 and contractual rights are to remain unchanged by the reorganization or liquidation
31 effectuated by the plan. These Classes are referred to under the Bankruptcy Code as
32 unimpaired and, because of such favorable treatment, are deemed to accept the plan.
33 Accordingly, it is not necessary to solicit votes from the holders of Claims in such
34 unimpaired Classes. A Chapter 11 plan may also provide that certain Classes will not
35 receive any distributions of property. Such Classes are deemed to reject the plan.

36 **All other Classes of Claims contain impaired Claims. An impaired Class is
37 generally a Class which will receive something less than their Claim under the plan
38 of reorganization. Before a plan can be confirmed by the Bankruptcy Court,
39 Chapter 11 generally requires that each impaired Class of Claims votes to accept a
40 plan. Acceptances must be received from the holders of Claims constituting at least
41 two-thirds in dollar amount and more than one-half in number of the allowed
42 Claims in each impaired Class of Claims that have voted on the plan. However, even
43 if an impaired Class rejects the plan, the Bankruptcy Court may confirm the plan if**

1 **certain minimum treatment standards are met with respect to such Class or Classes.**
2 **This is discussed in this Disclosure Statement under the Section heading**
3 **“Confirmation Without Acceptance by All Impaired Classes”. Classes that receive**
4 **nothing are deemed to reject the Plan.**

5 Chapter 11 does not require each holder of a Claim to vote in favor of a plan of
6 reorganization in order for the Bankruptcy Court to confirm the Plan. However, the
7 Bankruptcy Court must find that the Plan meets a number of tests (other than the voting
8 requirements described in this section) before it may confirm, or approve, the Plan. Many
9 of these tests are designed to protect the interests of holders of Claims who do not vote to
10 accept the Plan but who will nonetheless be bound by the Plan’s provisions if it is
11 confirmed by the Bankruptcy Court.

12 **Preserved Claims**

13 The Parties are referred to §8.9 of the Plan for a description of the claims which are
14 being preserved for future prosecution/collection.

15 **Solicitation of Acceptance of the Plan**

16 The Debtor is seeking acceptances of the Plan from holders of Allowed Claims
17 classified in Classes 2, 3, 5, 6, 7, 8, 9, and 10, which are the only Classes entitled to vote
18 under the Plan. The remaining Classes are unimpaired, and therefore deemed to accept
19 the Plan. If the requisite acceptances are received, the Debtor will use the acceptances as
20 evidenced by the Ballots solicited in connection with this Disclosure Statement and the
21 Solicitation Order to seek confirmation of the Plan under Chapter 11.

22 If any impaired Class is determined to have rejected the Plan in accordance with
23 Section 1126 of the Bankruptcy Code, the Debtor may use the provisions of Section
24 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan.

25 The Debtor believes that its Plan complies with applicable bankruptcy and non-
26 bankruptcy law. The Debtor believes this Disclosure Statement contains adequate
27 information for all holders of Impaired Claims to cast an informed vote to accept or reject
28 the Plan. Furthermore, the Debtor believes the holders of Impaired Claims will obtain a
greater recovery under the Plan than they would otherwise obtain if the Debtor’s assets
were immediately liquidated under Chapter 7 of the Bankruptcy Code.

If the Plan is confirmed by the Bankruptcy Court, each holder of an Impaired
Allowed Claim will receive the same pro-rata consideration as other holders of Claims in
the same Class, whether or not such holder voted to accept the Plan. Moreover, upon
Confirmation, the Plan will bind all Creditors regardless of whether or not such Creditors
voted to accept the Plan.

23 **Classification of Claims and Equity Interests**

24 Section 1123 of the Bankruptcy Code provides that a plan of reorganization must
25 classify Claims against a debtor. Under Section 1122 of the Bankruptcy Code, a plan
26 must classify Claims into Classes that contain substantially similar Claims. The Plan
27 divides the Claims of known Creditors into Classes and sets forth the treatment offered
28 each Class. The Debtor believes it has classified all Claims in compliance with the
provision of Section 1122 of the Bankruptcy Code, but it is possible that a Creditor may
challenge such classification of Claims and that the Bankruptcy Court may find that a
different classification is required for the Plan to be confirmed. If so, the Debtor intends,
to the extent permitted by Bankruptcy Code and the provisions of the Plan, to amend or

1 revoke the Plan and file an amended or different Plan that would make modifications to
2 the classification of Claims required by the Bankruptcy Court for confirmation.

3 The Classes under the Plan take into account the differing nature and priority of
4 Claims against the Debtor. Section 101(5) of the Bankruptcy Code defines Claim as a
5 right to payment, whether or not such right is reduced to judgment, liquidated, fixed,
6 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or
7 unsecured; or a right to an equitable remedy for breach of performance if such breach
8 gives rise to a right to payment whether or not such right to an equitable remedy is
9 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed,
10 secured or unsecured. A Claim against the Debtor also includes a Claim against the
11 Debtor's property as provided in Section 102(2) of the Bankruptcy Code.

12 For the holder of a Claim to participate in a reorganization plan and receive the
13 treatment offered to the Class in which it is classified, its Claim must be Allowed. Under
14 the Plan, an Allowed Claim is defined as a Claim: (a) proof of which, requests for
15 payment of which, or application for allowance of which, was filed or deemed filed on or
16 before the Bar Date, Administrative Claim Bar Date, or the Professional Fee Bar Date, as
17 applicable, for filing proofs of claim or requests for payment of claims of such type
18 against the Debtor; (b) if no proof of claim is filed, which has been or is ever listed by the
19 Debtor in the Schedules as liquidated in amount and not disputed or contingent; or c) a
20 Claim that is allowed in any contract, instrument, indenture, or other agreement entered
21 into in connection with the Plan and, in any case, a Claim as to which no objection to its
22 allowance has been interposed within the applicable period of limitation fixed by the Plan,
23 the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court. Any Claim to
24 which an Objection is filed is not an allowed claim until a court of competent jurisdiction
25 has entered a final, no-appealable order.

26 **Implementation of the Plan**

27 Since the Plan is being funded by ZHC as the Plan Sponsor, projections for ZHC's
28 operations are attached as **Exhibit 3**.

29 **Management of the Reorganized Debtor**

30 Subject to the provisions of the Plan, and in accordance with Section 1123(b)(3)(B)
31 of the Bankruptcy Code, David Zowine is the designated representative of the
32 Reorganized Debtor. Subject to the provisions of the Plan, Mr. Zowine will have the
33 power to take any and all such actions as are, in his judgment, necessary to fulfill the
34 Debtors' obligations under the Plan.

35 **Distributions**

36 On the Distribution Date, or as soon thereafter as practical, the Debtor shall effect a
37 Distribution to holders of Allowed Claims that, as of the date of the Distribution, have not
38 otherwise been paid or satisfied in accordance with the Plan.

39 **Description of Other Provisions of the Plan**

40 **Executory Contracts**

41 The Debtors are not a party to any executory contracts. The bankruptcy Court will
42 retain jurisdiction to resolve any disputes regarding executory contracts.

43 **Post-Effective Date Distributions**

1 Distributions made after the Effective Date to holders of Claims that are not
2 Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall
3 be deemed to have been made on the Effective Date. Notwithstanding any provision in
4 any contract or other document that may relate to a Claim, all Distributions made pursuant
5 to the Plan shall be made as if paid on the Initial Distribution Date, without the additional
6 accrual of interest, fees or penalties.

7 **Discharge**

8 Except as provided in the Plan or the Confirmation Order, the rights afforded under
9 the Plan and the treatment of Claims under the Plan are in exchange for and in complete
10 satisfaction, discharge, and release of, all Claims including any interest accrued on
11 Administrative Expense Priority Claims and General Unsecured Claims from the Petition
12 Date. Except as provided in the Plan or the Confirmation Order, confirmation of the Plan:
13 (a) discharges the Debtor from all Claims or other debts that arose before the
14 Confirmation Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(I)
15 of the Bankruptcy Code, whether or not: (i) a proof of claim based on such debt is filed or
16 deemed filed under Section 502 of the Bankruptcy Code; (ii) a Claim based on such debt
17 is Allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based
18 on such debt has accepted the Plan.

19 **Injunction**

20 Except as provided in the Plan or the Confirmation Order, as of the Confirmation
21 Date, all entities that have held, currently hold or may hold a Claim or Interest or other
22 debt or liability that is discharged are permanently enjoined from taking any of the
23 following actions on account of any such discharged Claims, debts or liabilities:
24 (a) commencing or continuing in any manner any action or other proceeding against the
25 Debtor (including any officer or director acting as a representative of the debtor) or
26 property of the Debtor; (b) enforcing, attaching, collecting or recovering in any manner
27 any judgment, award, decree or order against the Debtor or property of the Debtor;
28 (c) creating, perfecting, or enforcing any lien or encumbrance against the Debtor or
property of the Debtor, including; (d) asserting a setoff, right of subrogation or
recoupment of any kind against any debt, liability, or obligation due to the Debtor; and
(e) commencing or continuing any action, in any manner, in any place, that does not
comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

29 **Preservation of Insurance**

30 The Debtor's discharge and release from Claims as provided in the Plan, except as
31 necessary to be consistent with the Plan, do not diminish or impair the enforceability of
32 any insurance policy that may cover Claims against the Debtor or any other Person.

33 **Section 1146 Exemption**

34 In accordance with Section 1146(c) of the Bankruptcy Code: (a) the distribution,
35 transfer, or exchange of Estate property; (b) the creation, modification, consolidation, or
36 recording of any deed of trust or other security interest, the securing of additional
37 indebtedness by such means or by other means in furtherance of, or connection with, the
38 Plan or the Confirmation Order; (c) the making, assignment, modification, or recording of
any lease or sublease; or (d) the making, delivery, or recording of a deed or Order, or any
transaction contemplated above, or any transactions arising out of, contemplated by, or in
any way related to, the foregoing shall not be subject to any document recording tax,
stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real

1 estate transfer act, mortgage recording tax or other similar tax or governmental assessment
2 and the appropriate state or local government officials or agents shall be directed to forego
3 the collection of any such tax or assessment and to accept for filing or recordation any of
4 the foregoing instruments or other documents without payment of any such tax or
5 assessment.

6 **Withholding and Reporting Requirements**

7 In connection with the Plan and all instruments issued in connection with the Plan,
8 the Debtor shall comply with all withholding and reporting requirements imposed by any
9 federal, state, local or foreign taxing authority, and all Distributions under the Plan remain
10 subject to any such withholding and reporting requirements. The Debtor shall be
11 authorized to take all actions necessary to comply with such withholding and recording
12 requirements. Notwithstanding any other provision of the Plan, each holder of an
13 Allowed Claim that has received a Distribution of Cash, shall have sole and exclusive
14 responsibility for the satisfaction or payment of any tax obligation imposed by any
15 governmental unit, including income, and other tax obligation on account of such
16 Distribution. For tax purposes, Distributions received in respect of Allowed Claims will
17 be allocated first to the principal amount of such Claims, with any excess allocated to
18 unpaid accrued interest.

19 **Full and Final Satisfaction and Penalties and Fines**

20 In accordance with the Plan, all payments and all distributions are in full and final
21 satisfaction, settlement, release, and discharge of all Claims and Equity Interests, except
22 as otherwise provided in the Plan.

23 Except as expressly provided for in the Plan, no distribution shall be made under
24 the Plan on account of, and no Allowed Claim (whether Secured, Unsecured, Priority or
25 Administrative) shall include any fine, penalty, or exemplary or punitive damages relating
26 to or arising from any default or breach by the debtor, and any claim on account of such
27 fine, penalty, or exemplary or punitive damages shall be deemed to be disallowed,
28 whether or not an objection is filed to such Claim.

29 **Impaired Classes to Vote**

30 Each holder of a Claim in an impaired Class shall be entitled to vote separately to
31 accept or reject the Plan unless such holder is deemed to reject the Plan.

32 **Acceptance by Class of Creditors and Holders of Interest**

33 An impaired Class of holders of Claims shall have accepted the Plan if the Plan is
34 accepted by at least two-thirds in dollar amount and more than one-half in number of the
35 Allowed Claims of such Class that have voted to accept or reject the Plan. A class of
36 holders of Claims shall be deemed to accept the Plan in the event that no holder of a
37 Claim within that Class submits a Ballot by the Voting Deadline.

38 **Cramdown**

39 If any impaired Class of Claims entitled to vote does not accept the Plan by the
40 requisite statutory majorities provided in Section 1126(c) or 1126(d) of the Bankruptcy
41 Code as applicable, or if any impaired Class is deemed to have rejected the Plan, the
42 Debtor reserves the right to request that the Bankruptcy Court confirm the Plan under
43 Section 1129(b) of the Bankruptcy Code and to amend the Plan, in accordance with the

1 applicable provisions of the Plan governing amendments or modifications, to the extent
2 necessary to obtain entry of the Confirmation Order.

3 **Disbursement of Funds**

4 Any payment of Cash required to be made under the Plan will be made by check
5 drawn on a domestic bank or by wire transfer from a domestic bank at the election of the
6 Person making such payment. Any payment or distribution required to be made under the
7 Plan on a day other than a Business Day will be made on the next succeeding Business
8 Day, without interest.

9 From and after the Effective Date, the Debtor may litigate to Final Order, propose
10 settlements of, or withdraw objections to, all pending or filed Disputed Claims or
11 Litigation Claims and may settle or compromise any Disputed Claim or Litigation Claim
12 without notice and a hearing and without approval of the Bankruptcy Court.

13 **Retention of Jurisdiction**

14 Notwithstanding the entry of the Confirmation Order and the occurrence of the
15 Effective Date, the Bankruptcy Court retains broad jurisdiction over the Chapter 11 case
16 after the Effective Date, to the extent legally permissible.

17 **Amendment of the Plan**

18 At any time before the Confirmation Date, the Debtor may alter, amend, or modify
19 the Plan under Section 1127(a) of the Bankruptcy Code provided that such alteration,
20 amendment, or modification does not materially or adversely affect the treatment and
21 rights of holders of Claims or Interests under the Plan. After the Confirmation Date and
22 before substantial consummation of the Plan as defined in Section 1101(2) of the
23 Bankruptcy Code, the Debtor may, under Section 1127(b) of the Bankruptcy Code,
24 institute proceedings in the Bankruptcy Court to remedy any defect or omission or
25 reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation
26 Order, and such matters as may be necessary to carry out the purposes and effects of the
27 Plan so long as such proceedings do not materially and adversely affect the treatment of
28 holders of Allowed Claims under the Plan; provided, however, that prior notice of such
proceedings shall be served in accordance with the Bankruptcy Rules or applicable order
of the Bankruptcy Court.

29 **Revocation or Withdrawal of the Plan**

30 The Debtor reserves the right to revoke or withdraw the Plan at any time before the
31 Confirmation Date. If the Plan is withdrawn or revoked, then the Plan shall be deemed
32 null and void and nothing contained in the Plan shall be deemed a waiver of any Claims
33 by or against the Debtor or any other person in any further proceedings involving the
34 Debtor or an admission of any sort, and the Plan and any transaction contemplated by the
35 Plan shall not be admitted into evidence in any proceeding.

36 **Post-Confirmation Fees**

37 The Debtor will be responsible for the payment of any fees payable to the Office of
38 the United States Trustee for the Debtor after Confirmation, consistent with applicable
provisions of the Bankruptcy Code, Bankruptcy Rules, and 28 U.S.C. Section 1930(a)(6).
The Debtor plans to seek an order closing the case as soon as it is substantially
consummated, without the burden of ongoing fees assessed against all the Reorganized
Debtor's expenditures.

1 The Debtor estimates that it will incur at least \$100,000 in attorneys' fees to
2 implement the Plan, once it is confirmed. These fees would be incurred primarily to
represent the debtor on any appeals as well as claims objections.

3 **Conditions to Confirmation and Effective Date**

4 **Conditions to Confirmation.** The following are conditions precedent to
5 confirmation of the Plan:

- 6 • The Bankruptcy Court shall have entered a Final Order approving the
7 Disclosure Statement with respect to the Plan;
- 8 • The Confirmation Order has been entered in form and substance reasonably
9 acceptable to the Debtor, and contains specific provisions as set forth in the
Plan.
- 10 • Conditions to Effectiveness: The following are conditions precedent to the
11 occurrence of the Effective Date:
 - 12 • The Confirmation Date has occurred;
 - 13 • The Confirmation Order is a Final Order, except that the
14 Debtor reserves the right to cause the Effective Date to occur
15 notwithstanding the pendency of an appeal of the
16 Confirmation Order, under circumstances that would render
17 moot such an appeal;
 - 18 • No request for revocation of the Confirmation Order under
19 Section 1144 of the Bankruptcy Code has been made, or, if
20 made, remains pending;
 - 21 • The Bankruptcy Court, in the Confirmation Order, has
22 approved the retention of jurisdiction provisions of the Plan;
23 and
 - 24 • All documents necessary to implement the transactions
25 contemplated by the Plan are made in form and substance
26 reasonably acceptable to the Debtor and the Creditors'
27 Committee.
 - 28 • ***Waiver of Conditions.*** The conditions to confirmation and the
Effective Date may be waived in whole or in part by the
Debtor at any time without notice, an order of the Bankruptcy
Court, or any further action other than proceeding to
confirmation and consummation of the Plan.

28 **ACCEPTANCE AND CONFIRMATION OF THE PLAN**

1 The following is a brief summary of the provisions of the Bankruptcy Code
2 relevant to acceptance and confirmation of a plan of reorganization. Holders of Claims
3 are encouraged to review the relevant provisions of the Bankruptcy Code with their own
4 attorneys.

5 **Acceptance of the Plan**

6 This Disclosure Statement is provided in connection with the solicitation of
7 acceptances of the Plan. The Bankruptcy Code defines acceptance of a plan of
8 reorganization by a Class of Claims as acceptance by holders of at least two-thirds (2/3) in
9 dollar amount, and more than one-half (1/2) in number, of the Allowed Claims of that
10 Class that have actually voted or are deemed to have voted to accept or reject a plan. The
11 Bankruptcy Code defines acceptance of a plan of reorganization by a Class of interests as
12 accepted by at least two-thirds in amount of the allowed interests of that Class that have
13 actually voted or are deemed to have voted to accept or reject a plan.

14 If one or more impaired Classes reject the Plan, the Debtor may, in its discretion,
15 nevertheless seek confirmation of the Plan if the Debtor believes that the requirements of
16 Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are
17 summarized below) will be met, despite the lack of acceptance by all Impaired Classes.

18 **Confirmation**

19 **Confirmation Hearing**

20 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after
21 notice, to hold a hearing on confirmation of a plan. Notice of such hearing is being
22 provided to all known holders of Claims or Interests or their respective representatives
23 along with this Disclosure Statement. The hearing may be adjourned from time to time by
24 the Bankruptcy Court without further notice except for an announcement of the adjourned
25 date made at such hearing or any subsequent adjournment thereof.

26 Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may
27 object to confirmation of a plan. Any objection to confirmation of the Plan must be in
28 writing, must conform with the Bankruptcy Rules and the Local Rules of the Bankruptcy
Court, must set forth the name of the objecting party, the nature and amount of Claims or
Equity Interests held or asserted by that party against the Debtor's Estate or property, and
the specific basis for the objection. Such objection must be filed with the Bankruptcy
Court, with a copy forwarded directly to the chambers of the Honorable Paul Sala,
together with a proof of service, and served on all parties and by the date set forth on the
notice of the confirmation hearing in accordance with the Local Rules of the Bankruptcy
Court.

29 **Statutory Requirements for Confirmation of the Plan**

30 At the confirmation hearing, the Debtor will request the Bankruptcy Court
31 determine that the Plan satisfies the requirements of Section 1129 of the Bankruptcy
32 Code. If the Bankruptcy Court so determines, the Bankruptcy Court will enter an order
33 confirming the Plan. The applicable requirements of Section 1129 of the Bankruptcy
34 Code are as follows:

- 35 • The Plan must comply with the applicable provisions of the Bankruptcy
36 Code;

- The Debtor must have complied with the applicable provisions of the Bankruptcy Code;
- The Plan must have been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised to be made by the Debtor under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan, must have been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan must be reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment must be subject to the approval of the Bankruptcy as reasonable;
- The Debtor must have disclosed the identity and affiliates of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtors under the Plan. Moreover, the appointment to, or continuance in, such office of such individual, must be consistent with the interests of holders of Claims and with public policy, and the Debtor must have disclosed the identity of any insider that the Debtor will employ or retain, and the nature of any compensation for such insider;
- Best Interests of Creditors Test: With respect to each Class of Impaired Claims, either each holder of a Claim of such Class must have accepted the Plan, or must receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code. In a Chapter 7 liquidation, creditors and interest holders of a debtor are paid from available assets generally in the following order, with no lower Class receiving any payments until all amounts due to senior Classes have either been paid in full or payment in full is provided for: (i) first to secured creditors (to the extent of the value of their collateral); (ii) next the Chapter 7 trustee's and his attorney's fees and expenses, and other liquidation costs; (iii) next to priority creditors; (iv) next to unsecured creditors; (v) next to debt expressly subordinated by its terms or by order of the Bankruptcy Court; and (vi) last to holders of equity interests. The Debtor's best estimates of values of assets and liabilities are set forth herein. The Debtor has attached a Liquidation Analysis as **Exhibit 4** which it believes satisfies the best Interests of Creditors test.

- Each Class of Claims must have either accepted the Plan or not be Impaired under the Plan;
- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Allowed Administrative and Priority Claims (other than Allowed Priority Tax Claims) will be paid in full on the Effective Date and that Allowed Priority Tax Claims will receive on account of such Claim's deferred Cash payment, over a period not exceeding six years after the date of assessment of such Claim, of a value, as of the Effective Date, equal to the Allowed amount of such Claim; and
- At least one Impaired Class of Claim must have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class.

Confirmation Without Acceptance by All Impaired Claims

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan, even if such plan has not been accepted by all impaired Classes entitled to vote on such plan, provided that such plan has been accepted by at least one Impaired Class. If any Impaired Classes reject or are deemed to have rejected the Plan, the Debtor reserves its right to seek the application of the requirements set forth in Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all Impaired Classes.

Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of an Impaired Class to accept a plan of reorganization, the plan must be confirmed, on request of the plan proponent (in a procedure commonly known as **Cramdown**), so long as the plan does not discriminate unfairly and is fair and equitable with respect to each Class of Impaired Claims or Interests that has not accepted the plan.

The condition that a plan be fair and equitable with respect to a rejecting Class of Secured Claims includes the requirements that (a) the holders of such Secured Claims retain the liens securing such Claims to the extent of the allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan, and (b) each holder of a Secured Claim in the Class receives deferred cash payments totaling at least the allowed amount of such Claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be fair and equitable with respect to a rejecting Class of Unsecured Claims or a rejecting Class of Interests includes the requirement that either (a) such Class receive or retain under the plan property of a value as of the effective date of the plan equal to the allowed amount of such Claim or Interest, as the case may be, or (b) if the Class does not receive such amount, no Class junior to the non-accepting Class will receive a payment distribution under the plan.

CERTAIN INCOME TAX CONSEQUENCES

SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN. NO RULINGS HAVE BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. THEREFORE, EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT HIS OWN TAX ADVISOR REGARDING SUCH FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES.

RISK FACTORS

In this section, the Debtor has attempted to identify the potential material risks of the Plan. **CREDITORS SHOULD CONSIDER CAREFULLY THE FOLLOWING FACTORS, IN ADDITION TO THE OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, BEFORE SUBMITTING A VOTE TO ACCEPT OR REJECT THE PLAN.**

Fluctuations in the Value of Debtor's Assets

The current value assigned to the Debtor's assets is uncertain, may not remain constant, and may decline over time due to a variety of factors including a downturn in the general economy of the United States or the economics of the potential customers of the Debtor. A disruption or continued downturn in the economy could make it more difficult, or impossible, for the Debtor's product to be sold at a favorable price. In addition, the projections on which these valuations are based could also prove to be incorrect. It is important to remember that the value assigned to a business is in many cases difficult to predict and involve uncertainty.

Risk of Non-Confirmation of the Plan

Although the Debtor believes the Plan will satisfy all requirements necessary for confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. Amendments to the Plan may also be required by the Court for confirmation, and these amendments could adversely affect the Creditors' rights to receive distributions under the Plan. Any amendment may also necessitate the re-solicitation of votes. If the Plan is not confirmed, a fire sale (i.e., immediate liquidation) of the Debtor's assets may occur. While a fire sale of the Debtor's assets would likely yield less than the value of the assets in accordance with the Plan, the range of estimated recoveries in either case is subject to variation based upon market conditions and other factors that are beyond the Debtor's control.

ALTERNATIVES TO THE PLAN

If the Plan is not timely confirmed, the most likely alternative is either (1) a sale of the debtor's assets, or (2) a Chapter 7 liquidation proceeding. A sale is fraught with a multitude of issues, such as the lease of where the debtor currently conducts its operations, and the lease of a substantial amount of the debtor's equipment. In a Chapter 7 liquidation proceeding, a Chapter 7 trustee would be appointed by the Bankruptcy Court to oversee the liquidation of the Debtor's assets. Such trustee would be entitled to retain a new set of professionals, including lawyers and accountants, to review and analyze all of the Claims and the Debtor's assets. In addition, the Chapter 7 trustee would be entitled to request a fee equal to 3% of all distributions made to the Creditors. The Debtor believes that the conversion to a Chapter 7 liquidation proceeding and the appointment of a new

1 trustee and new estate professionals would substantially increase professional fees and
2 result in further delays and a reduction in distributions.

3 The Debtor has explored various alternative scenarios, including the scenarios
4 described above, and believes the Plan enables the holders of Claims to realize the
5 maximum recovery under the circumstances. The Debtor believes the Plan is the best
6 plan that can be proposed and serve the best interests of the Debtor and other parties-in-
7 interest.

8 **RECOMMENDATION AND CONCLUSION**

9 The Debtor has analyzed different scenarios and believes the Plan will provide the
10 best opportunity for the Debtor to reorganize its financial affairs and provide a full
11 payment to creditors. Any alternative other than confirmation of the Plan could result in
12 extensive delays and increased administrative expenses resulting in potentially less
13 successful emergence from bankruptcy and ultimately liquidation. Accordingly, the
14 Debtor recommends confirmation of the Plan and urges all holders of Impaired Claims to
15 vote to accept the Plan and to indicate acceptance by returning their Ballots so as to be
16 received by no later than the Voting Deadline.

17 RESPECTFULLY SUBMITTED this 2nd day of December, 2016.

18 /s/ David Zowine
19 David Zowine

20 /s/ Karina Zowine
21 Karina Zowine

22 COPY of the foregoing served by electronic
23 mail this 2nd day of December, 2016 to:

24 Office of the United States Trustee
25 230 North First Avenue
26 Phoenix, Arizona 85003

27 /s/ Sharon D. Kirby
28