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

14 **In Re:**

Chapter 11

15 **MURDOCK EMPIRE GROUP, INC.,**
16 **an Arizona corporation,**

Case No.: 2:16-bk-11113-DPC

17 **Debtor.**

**DISCLOSURE STATEMENT CONCERNING
DEBTOR'S PLAN OF REORGANIZATION
DATED MAY 15, 2017**

18 **I. INTRODUCTION**

19 This is the disclosure statement (the "Disclosure Statement")¹ concerning "Debtor's Plan of
20 Reorganization Dated May 15, 2017" (the "Plan") filed in the small-business chapter 11 case of
21 Murdock Empire Group, Inc. ("Debtor"). It contains information about the Debtor and the Plan (a
22 full copy of which is attached hereto as Exhibit "A").

23 *Your rights may be affected. You should read the Plan and this Disclosure Statement*
24 *carefully and discuss them with your attorney. If you do not have an attorney, you may wish to*
25 *consult one.*

26 ¹
27 The format of this disclosure statement is based largely on Official Form B25B and the corresponding
28 instructions, and Committee Notes, which are an implementation of § 433 of the Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005) ("BAPCPA"), that provide for an
official form for a disclosure statement that may be used in cases where the debtor is a small business debtor under §
101(51D) of the Code.

1 The proposed distributions under the Plan are discussed on pages 7-11 and 17-19 of this
2 Disclosure Statement. General unsecured creditors are classified in Class 6, and are projected to
3 receive a distribution of approximately 40% of their allowed claims.

4 A. Purposes of this Document

5 This Disclosure Statement describes:

- 6 1. The Debtor and significant events during the bankruptcy case,
- 7 2. How the Plan proposes to treat claims or equity interests of the type you hold
8 (i.e., what you will receive on your claim or equity interest if the plan is confirmed),
- 9 3. Who can vote on or object to the Plan,
- 10 4. What factors the bankruptcy court (the “Court”) will consider when deciding
11 whether to confirm the Plan,
- 12 5. Why the Debtor believes the Plan is feasible, and how the treatment of your
13 claim or equity interest under the Plan compares to what you would receive on your claim or equity
14 interest in liquidation, and,
- 15 6. The effect of confirmation of the Plan.

16 *Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement*
17 *describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.*

18 B. Deadlines for Objecting to and Voting on the Plan; Date of Confirmation Hearing

19 The Court has not yet confirmed the Plan described in this Disclosure Statement. This
20 section describes the procedures pursuant to which the Plan will or will not be confirmed.

- 21 1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement*
22 *and Confirm the Plan.*

23 The hearing at which the Court will determine whether to finally approve this Disclosure
24 Statement and confirm the Plan will take place on _____, at _____, in
25 Courtroom 603, at the United States Bankruptcy Court for the District of Arizona, Phoenix
26 Division, 230 N. 1st Ave., Phoenix, Arizona, 85003.

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2. *Deadline For Voting to Accept or Reject the Plan.*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot to Brian M. Blum, Andante Law Group, PLLC, 4110 N. Scottsdale Rd., Ste. 330, Scottsdale, Arizona, 85251. See section IV.(A), below, for a discussion of voting eligibility requirements.

Your ballot must be received by _____ or it will not be counted.

3. *Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan.*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Debtor’s counsel by _____.

4. *Identity of Person to Contact for More Information.*

If you want additional information about the Plan, you should contact Daniel E. Garrison or Brian M. Blum, whose contact information appears at the top of this document.

C. Disclaimer.

The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. The Court’s approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until _____.

II. BACKGROUND

A. Description and History of the Debtor’s Business

Debtor is an Arizona corporation owned by John and Sharon Murdock, and currently operates two Subway® restaurant franchises. In October 2014, Debtor opened its first two Subway® restaurants located at the Fiesta Mall in Mesa, Arizona, and the Paradise Valley Mall, located in Paradise Valley, Arizona. Debtor closed the Fiesta Mall restaurant prior to its bankruptcy

1 filing because it was not profitable and Debtor could not sustain its operation. In September 2015,
2 Debtor opened two, additional Subway® restaurants, located in fairly close proximity to each other
3 in Scottsdale, Arizona, one of which is referred to as the “Hayden Store”, and the other of which is
4 referred to as the “McDowell Store”. Both the Hayden Store and the McDowell Store remain in
5 operation today.

6 Both the Paradise Valley Mall store and the Fiesta Mall store were purchased with cash
7 contributed to the Debtor by the Murdocks. The Hayden Store was purchased with a combination
8 of cash contributed to the Debtor by the Murdocks, and the proceeds of a loan to the Debtor by
9 Ascentium Capital, LLC (“Ascentium”). The McDowell Store was purchased with a combination
10 of cash contributed to the Debtor by the Murdocks, and the proceeds of a loan to the Debtor by
11 Direct Capital, LLC (“Direct”).

12 The franchise agreements for the Hayden Store and the McDowell Store, as well as the
13 subleases for the physical locations of the stores are held by the Murdocks personally.

14 B. Events Leading to Chapter 11 Filing

15 Debtor’s Paradise Valley Mall and Fiesta Mall stores experienced significant seasonality in
16 sales, and required substantial cash infusions prior to the Debtor ultimately deciding to close them.
17 Debtor incurred additional debt, and was forced to use excess cash produced by its performing
18 stores to sustain operations at the two, underperforming stores prior to closing them. Once Debtor
19 closed the underperforming stores, it was left with significantly more debt than the remaining two
20 stores could service.

21 C. Insiders and Management of the Debtor

22 Debtor is owned by John and Sharon Murdock, who also serve as general managers for the
23 Debtor’s two restaurants. The Plan contemplates that the Murdocks will remain in ownership and
24 control of the Debtor, and continue to serve as general managers of the restaurants, following the
25 effective date of the Plan.

26 D. Significant Events During the Bankruptcy Case

27 Since this case was filed on September 28, 2016, Debtor has continued to operate its two
28 restaurants. Although Debtor sought permission to file its schedules of assets and liabilities and

1 statement of financial affairs later than the standard deadline, before an order could be entered
2 approving that extension, the case was administratively dismissed on October 27, 2016. Debtor
3 obtained court approval reinstating the case on October 31, 2016.

4 Debtor attempted over the first several months of this chapter 11 case to sustain operations
5 at the Paradise Valley location, but ultimately concluded after the 2016 holiday season that the
6 Paradise Valley store also needed to be closed.

7 Early in the case, Debtor negotiated the consensual use of cash collateral generated by its
8 businesses, and has obtained extensions of that consensual use during the pendency of the case.
9 Debtor also sought and obtained court approval to pay the prepetition claim of Shamrock Foods,
10 the sole provider of food for the operation of Debtor's restaurants under the terms of the franchise
11 agreements with Subway®.

12 Despite paying Shamrock's pre-petition claim, Shamrock subsequently terminated Debtor's
13 credit terms and placed the account on C.O.D. After some negotiation, Shamrock reinstated credit
14 terms, but insisted on a \$5,000 deposit. Each of these events placed unexpected and significant cash
15 flow strain on Debtor's operations and, together with the need to subsidize the Paradise Valley
16 store prior to its closing early in 2017, account for Debtor's inability to generate meaningful free
17 cash flow until February 2017.

18 E. Projected Recovery of Avoidable Transfers

19 The Debtor does not intend to pursue preference, fraudulent transfer, or other avoidance
20 actions.

21 F. Claims Objections

22 Except to the extent that a claim is already allowed pursuant to a final non-appealable order,
23 the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting
24 purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The
25 procedures for resolving disputed claims are set forth in the Plan.

26 Debtor believes that the putatively secured claims of OnDeck Capital, Inc. ("OnDeck") and
27 American Express Bank, FSB ("Amex Bank") were not properly perfected as a matter of law,
28 insofar as they utilized legally insufficient collateral descriptions in their recorded UCC-1 financing

1 statements. Debtor specifically reserves the right to object to these claims as secured, although such
2 objection may be mooted to the extent that the court concludes that such claims are unsecured
3 pursuant to Section 506(a) of the Bankruptcy Code.

4 G. Current and Historical Financial Condition

5 The identity and fair market value of the Debtor's assets are listed on Schedule B to the
6 Petition. The basis for the valuation is the opinion of John Murdock. Debtor also intends to present
7 opinion testimony of Mr. Murdock as to the fair market value of the restaurants as going concerns
8 in connection with an anticipated motion under Section 506(a) of the Bankruptcy Code, which will
9 be heard in tandem with the proposed confirmation of the Plan.

10 On the bankruptcy petition date, Debtor held approximately \$1,200 in cash. For the first few
11 months of the chapter 11 case, Debtor operated at, or slightly below, a break-even basis. Total sales
12 at the two restaurants varied between approximately \$60,000 and \$75,000 per month. Beginning in
13 February 2017, Debtor's operations showed operating income of approximately 10% of sales,
14 which has remained steady through April. Debtor's remaining, two restaurants (as opposed to the
15 two it previously closed, which were located in malls) are not seasonal. Primary customer traffic is
16 from employees of surrounding businesses, and nearby residents. Summaries from the monthly
17 operating reports for February through April are attached hereto as composite Exhibit "A".

18 III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS
19 AND EQUITY INTERESTS

20 A. What Is the Purpose of the Plan of Reorganization?

21 As required by the Code, the Plan places claims and equity interests in various classes and
22 describes the treatment each class will receive. The Plan also states whether each class of claims or
23 equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to
24 the amount provided by the Plan.

25 B. Unclassified Claims

26 Certain types of claims are automatically entitled to specific treatment under the Code. They
27 are not considered impaired, and holders of such claims do not vote on the Plan. They may,
28

1 however, object if, in their view, their treatment under the Plan does not comply with that required
2 by the Code. As such, the Plan Proponent has not placed the following claims in any class:

3 1. *Administrative Expense Claims.* Administrative expenses are costs or
4 expenses of administering the Debtor’s chapter 11 case which are allowed under § 507(a)(2) of the
5 Code. Administrative expenses also include the value of any goods sold to the Debtor in the
6 ordinary course of business and received within 20 days before the date of the bankruptcy petition.
7 The Code requires that all administrative expenses be paid on the effective date of the Plan, unless
8 a particular claimant agrees to a different treatment. Each holder of an administrative expense claim
9 allowed under § 503 of the Code will be paid in full on the effective date of this Plan (as defined in
10 section 8.02, below), in cash, or upon such other terms as may be agreed upon by the holder of the
11 claim and the Debtor. The following administrative expenses shall be paid:

12 a) *Professional Fees.* Debtor’s counsel, Andante Law Group PLLC, shall be
13 allowed total compensation of as may be approved by the court in a separate fee application.
14 This expense shall be paid in full on the effective date of the Plan, or according to a separate
15 written agreement, or according to court order if such fees have not been approved by the
16 Court on the effective date of the Plan. Debtor estimates this expense will be approximately
17 \$20,000.

18 b) *Office of the U.S. Trustee Fees.* The Debtor will pay fees to the United States
19 Trustee as they become due. Debtor is current in these fees presently.

20 2. *Priority Claims.* Priority tax claims are unsecured income, employment, and other
21 taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax
22 claim agrees otherwise, it must receive the present value of such claim, in regular installments paid
23 over a period not exceeding 5 years from the order of relief. Debtor believes that there is one
24 priority tax claim in this case, held by the Arizona Department of Revenue (“ADOR”) and relating
25 to unpaid transaction privilege/sales tax of the Debtor. The ADOR shall receive monthly
26 installment payments over a period extending from the a) effective date of this Plan or, b) such date
27 as the bankruptcy court determines the allowed amount of the ADOR claim, to a date that is no
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1 more than sixty months from the Debtor's petition date, and of a total value, as of the effective date
2 of this Plan, equal to the allowed amount of its claim.

3 C. Classes of Claims and Equity Interests

4 The following are the classes set forth in the Plan, and the proposed treatment that they will
5 receive under the Plan:

6 1. *Classes of Secured Claims*

7 Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate
8 (or that are subject to setoff) to the extent allowed as secured claims under Section 506 of the Code.
9 If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the
10 creditor's allowed claim, the deficiency will be classified as a general unsecured claim. The
11 following secured claims are classified and treated under the Plan:

12 a) *Class 1.* Class 1 consists of the claim of Ascentium Capital, LLC
13 ("Ascentium"), to the extent allowed as a secured claim under Section 506(a)(1) of the
14 Code, with the balance of any allowed claim of Ascentium treated in Class 6, below. This
15 claim is evidenced by proof of claim number 4 and is asserted in the amount of \$214,372. It
16 is secured by an apparently valid, properly perfected and first-priority lien in substantially
17 all of the assets of the Debtor, perfected through a UCC-1 filing on September 10, 2015.
18 That portion of the Ascentium claim that is allowed, and determined by the bankruptcy
19 court under Section 506(a)(1) to be secured shall be amortized over a period of 84 months
20 from the effective date of this Plan, bearing interest at an annual, simple rate of 5%, and the
21 reorganized Debtor shall make regular, monthly installment payments of principal and
22 interest. Any portion of the Ascentium claim that is allowed, and determined by the
23 bankruptcy court under Section 506(a)(1) to be unsecured, shall be treated in Class 6.
24 Debtor believes that this claim is substantially, if not fully, secured. Class 1 is impaired.

25 b) *Class 2.* Class 2 consists of the claim of Direct Capital ("Direct"), to the
26 extent allowed as a secured claim under Section 506(a)(1) of the Code, with the balance of
27 any allowed claim of Direct treated in Class 6, below. This claim was scheduled by the
28 Debtor in the amount of \$149,192, and is secured by an apparently valid, properly perfected

1 and second-priority lien in substantially all of the assets of the Debtor, perfected through a
2 UCC-1 filing on September 14, 2015. That portion of the Direct claim that is allowed, and
3 determined by the bankruptcy court under Section 506(a)(1) to be secured shall be
4 amortized over a period of 84 months from the effective date of this Plan, bearing interest at
5 an annual, simple rate of 5%, and the reorganized Debtor shall make regular, monthly
6 installment payments of principal and interest. Any portion of the Direct claim that is
7 allowed, and determined by the bankruptcy court under Section 506(a)(1) to be unsecured,
8 shall be treated in Class 6. Debtor believes that this claim is substantially, if not fully,
9 unsecured. Class 2 is impaired.

10 c) *Class 3.* Class 3 consists of the claim of OnDeck Capital, Inc. (“OnDeck”),
11 to the extent allowed as a secured claim under Section 506(a)(1) of the Code, with the
12 balance of any allowed claim of OnDeck treated in Class 6, below. This claim is evidenced
13 by proof of claim number 3 and is asserted in the amount of \$91,771.28. It is putatively
14 secured by a third-priority lien in substantially all of the assets of the Debtor, the attempted
15 perfection of which was sought by a UCC-1 filing on January 19, 2016. Debtor maintains
16 that the collateral description provided in OnDeck’s UCC-1 filing was inadequate as a
17 matter of controlling Arizona law. That portion of the Direct claim that is allowed, and
18 determined by the bankruptcy court under Section 506(a)(1) to be secured shall be
19 amortized over a period of 84 months from the effective date of this Plan, bearing interest at
20 an annual, simple rate of 5%, and the reorganized Debtor shall make regular, monthly
21 installment payments of principal and interest. Any portion of the OnDeck claim that is
22 allowed, and determined by the bankruptcy court under Section 506(a)(1) to be unsecured,
23 shall be treated in Class. Debtor believes that this claim is fully unsecured. Class 3 is
24 impaired.

25 d) *Class 4.* Class 4 consists of the claim of American Express Bank, FSB
26 (“Amex Bank”), to the extent allowed as a secured claim under Section 506 of the Code,
27 with the balance of any allowed claim of Amex Bank treated in Class 6, below. This claim
28 is evidenced by proof of claim number 2 and is asserted in the amount of \$24,044.14. It is

1 putatively secured by a fourth-priority lien in substantially all of the assets of the Debtor,
2 the attempted perfection of which was sought by a UCC-1 filing on May 14, 2016. Debtor
3 maintains that the collateral description provided in Amex Bank's UCC-1 filing was
4 inadequate as a matter of controlling Arizona law. That portion of the Direct claim that is
5 allowed, and determined by the bankruptcy court under Section 506(a)(1) to be secured
6 shall be amortized over a period of 84 months from the effective date of this Plan, bearing
7 interest at an annual, simple rate of 5%, and the reorganized Debtor shall make regular,
8 monthly installment payments of principal and interest. Any portion of the Direct claim that
9 is allowed, and determined by the bankruptcy court under Section 506(a)(1) to be
10 unsecured, shall be treated in Class 6. Debtor believes that this claim is fully unsecured.
11 Class 4 is impaired.

12 e) *Class 5.* Class 5 consists of the claim of Funding Metrics, dba Lendini
13 ("Lendini"), to the extent allowed as a secured claim under Section 506 of the Code, with
14 the balance of any allowed claim of Lendini treated in Class 6, below. This claim was
15 scheduled by the Debtor in the amount of \$58,745, and is secured by an apparently valid,
16 properly perfected and fifth-priority lien in substantially all of the assets of the Debtor,
17 perfected through a UCC-1 filing on June 8, 2016. That portion of the Direct claim that is
18 allowed, and determined by the bankruptcy court under Section 506(a)(1) to be secured
19 shall be amortized over a period of 84 months from the effective date of this Plan, bearing
20 interest at an annual, simple rate of 5%, and the reorganized Debtor shall make regular,
21 monthly installment payments of principal and interest. Any portion of the Direct claim that
22 is allowed, and determined by the bankruptcy court under Section 506(a)(1) to be
23 unsecured, shall be treated in Class 6. Debtor believes that this claim is fully unsecured.
24 Class 5 is impaired.

25 2. *Classes of Unsecured Claims.*

26 a) *Unsecured Priority Claims.* Certain priority claims that are referred to in §§
27 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code
28 requires that each holder of such a claim receive cash on the effective date of the Plan equal

1 to the allowed amount of such claim. However, a class of holders of such claims may vote
2 to accept different treatment. The Debtor has no priority unsecured claims.

3 b) *Class 6; General Unsecured Claims.* Class 6 consists of all unsecured claims
4 allowed under Section 502 of the Code, including any portion of a putatively secured claim
5 determined by the Bankruptcy Code to be unsecured pursuant to Section 506(a)(1) or any
6 other provision of the Code. The holders of allowed claims in Class 6 shall receive *pro rata*
7 shares of the reorganized Debtor's "Net Distributable Cash", as that term is defined in
8 Section D.1, below. Until and unless all allowed claims in Class 6 are paid in full, plus
9 interest at an annual, simple rate of 5%, distributions shall be made on or before the first
10 business day that is at least 90 days following December 31, 2017, December 31, 2018,
11 December 31, 2019, December 31, 2020, December 31, 2021, December 31, 2022,
12 December 31, 2023, and the date that is the seventh anniversary of the effective date of this
13 Plan. Class 6 is impaired.

14 3. *Classes of Equity Interests*

15 a) *Class 7.* Class 7 consists of the holders of equity interests in the Debtor, John
16 and Sharon Murdock (the "Murdocks"). The holders of equity interests in the Debtor, the
17 Murdocks, shall retain such interests under the Plan in exchange for an assignment of their
18 rights under the franchise agreements and subleases relating to the Debtor's two Subway®
19 restaurants, which are held by them personally. Such assignment shall be irrevocable and
20 binding upon confirmation and the occurrence of the effective date of this Plan, and
21 continue for the term of this Plan. Debtor maintains that this assignment constitutes the
22 contribution of "new value" as that term is used in controlling case law concerning the so-
23 called "absolute priority rule". See, e.g., Bank of America Nat'l Trust & Savs. Ass'n v. 203
24 North LaSalle St. Partnership, 119 S. Ct. 1411 (1999). Class 7 is impaired.

25 D. Means of Implementation of the Plan

26 1. *Operation of Businesses.* The primary source of funding for this Plan shall be excess
27 cash flows generated from the continued operation of Debtor's two Subway® restaurants. Gross
28 sales receipts shall be used to fund the restaurants' ordinary course operating expenses, including

1 rent imposed by the premises subleases; utility costs; franchise fees; inventory and labor costs;
2 repair and replacement of premises, furniture, fixtures and equipment; and taxes, and the remaining
3 portion of the gross sales receipts shall be referred to as “Operating Income”. Operating Income
4 shall be used to fund the Murdocks’ salaries (see section D.3, below), payments of principal and
5 interest to secured creditors under this plan (see section C.1, above), and payments to holders of
6 priority tax claims (see section B.2, above) and other priority and administrative claims, and the
7 remaining balance of Operating Income, plus any liquidation proceeds (see section D.4, below),
8 shall be referred to as “Net Distributable Cash”. Net Distributable Cash shall be used to fund the
9 Operating Reserve (see section D.2, below), and to make distributions to unsecured creditors under
10 this plan (see section C.2, above).

11 2. *Operating Reserve.* The reorganized Debtor shall be entitled to establish and
12 maintain an operating reserve in the maximum amount of \$10,000 prior to making distributions to
13 the holders of allowed claims in Class 6. The operating reserve may be used for any purpose
14 authorized by this Plan. In the event that the balance of the operating reserve falls below \$10,000,
15 the reorganized Debtor may replenish the balance before making additional distributions to the
16 holders of allowed claims in Class 6.

17 3. *Murdocks’ Salaries.* The Murdocks shall function as general managers of the
18 reorganized Debtor’s Subway® restaurants and shall receive (collectively) a salary for performing
19 this necessary function during the term of this Plan. The base salary of the Murdocks shall be
20 \$4,000 per month, and shall not be increased so long as Operating Income does not exceed \$8,000
21 per month. The Murdocks’ salary shall be increased, to a maximum of \$7,500 per month, by 50%
22 of the amount by which Operating Income exceeds \$8,000 per month on a rolling three-month
23 average. The Murdocks’ salary shall be adjusted, up or down, on no more than a quarterly basis.

24 At the time that Debtor acquired its restaurants, one or more of them employed a general
25 manager at a salary of \$45,000 per year. Debtor believes that the cost of a general manager for each
26 of the restaurants would require a commitment of salary and benefits at or above this historical
27 level *per restaurant*. Debtor further believes that a single general manager for both restaurants
28 would not be operationally sufficient.

1 Accordingly, the Murdocks' willingness to operate as general managers for both restaurants
2 for a base salary of \$4,000 per month is significantly undermarket and represents a significant value
3 to this estate and its creditors.

4 4. *Liquidation Proceeds of Excess Furniture, Fixtures and Equipment.* The Debtor
5 owns certain furniture, fixtures and equipment from two, closed Subway® restaurants that it
6 previously operated. Using reasonable business judgment, the reorganized Debtor may a) retain and
7 use such excess property to augment, repair or replace its similar property in use in its operating
8 restaurants, or b) liquidate such excess property. The reorganized debtor need not give prior notice
9 nor seek court approval for any such liquidation so long as a proposed sale of such property is made
10 to a third party regularly engaged in the wholesale liquidation of like property, or, if made to a
11 private party, such sale is made at a price consistent with an appraised value established by a third
12 party regularly engaged in the wholesale liquidation or appraisal of like property, and on such terms
13 as are objectively reasonable in the market. Any proceeds of the liquidation of property under this
14 section of the Plan may be used for any purpose authorized under this Plan, but shall not be
15 regarded as Operating Income for the purpose of setting the Murdocks' salary.

16 5. *Distributions to Unsecured Creditors.* No distributions to holders of general
17 unsecured claims (see section C.2, above) shall be made until all unclassified administrative and
18 priority claims have been paid in full, except to the extent that distributions to the holders of
19 priority tax claims may be made as provided in section B.2, above.

20 6. *Reporting with Distributions.* The reorganized Debtor shall serve as disbursing agent
21 under this Plan, and each distribution to the holders of general unsecured claims shall be
22 accompanied by an annual report containing at least the following information: a) a profit and loss
23 statement for the reorganized debtor for the year prior to the distribution date; b) a summary of any
24 liquidation proceeds obtained during the applicable distribution period; c) a statement of the gross
25 distribution of Net Distributable Cash being made for the applicable distribution period; c) and a
26 cumulative statement of distributions of Net Distributable Cash made under the Plan since the
27 effective date.

1 E. Risk Factors

2 The reorganized Debtor's ability to earn income is the primary risk factor in this case.
3 Debtor's operational results have improved and apparently stabilized in the last few months, and
4 the Debtor's financial challenges leading up to this filing relating two its two, underperforming
5 (and now closed stores), and non-recurring costs since the filing, have been primary causes of
6 unremarkable results in the months prior to this recent improvement.

7 Debtor operates its two restaurants under franchise agreements with Subway®, and the
8 continuing enjoyment of those franchise relationships is key to the reorganized Debtor's ongoing
9 performance.

10 F. Executory Contracts and Unexpired Leases

11 Debtor is not party to executory contracts or unexpired leases. Notwithstanding this belief,
12 the Plan provides that all executory contracts and unexpired leases are deemed rejected pursuant to
13 Section 365 of the Code.

14 G. Tax Consequences of the Plan

15 The confirmation and consummation of the Plan may result in federal and state income tax
16 consequences to holders of claims. Tax consequences to a particular creditor will depend on the
17 particular circumstances regarding the claim of that creditor.

18 *Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax*
19 *Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.*

20 IV. CONFIRMATION REQUIREMENTS AND PROCEDURES.

21 To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the
22 Code. These include the requirements that: the Plan must be proposed in good faith; at least one
23 impaired class of claims must accept the plan, without counting votes of insiders; the Plan must
24 distribute to each creditor and equity interest holder at least as much as the creditor or equity
25 interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest
26 holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only
27 requirements listed in § 1129, and they are not the only requirements for confirmation.

28

1 A. Who May Vote or Object

2 Any party in interest may object to the confirmation of the Plan if the party believes that the
3 requirements for confirmation are not met.

4 Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A
5 creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or
6 equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting
7 purposes and (2) impaired.

8 In this case, the Debtor (the plan proponent) believes that all classes are impaired and that
9 holders of claims in every class are therefore entitled to vote to accept or reject the Plan.

10 1. What Is an Allowed Claim or an Allowed Equity Interest?

11 Only a creditor or equity interest holder with an allowed claim or an allowed equity interest
12 has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the
13 Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as
14 disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest,
15 unless an objection has been filed to such proof of claim or equity interest. When a claim or equity
16 interest is not allowed, the creditor or equity interest holder holding the claim or equity interest
17 cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the
18 claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of
19 Bankruptcy Procedure.

20 2. What Is an Impaired Claim or Impaired Equity Interest?

21 As noted above, the holder of an allowed claim or equity interest has the right to vote only if
22 it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is
23 considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of
24 that class.

25 3. Who is Not Entitled to Vote

26 The holders of the following five types of claims and equity interests are not entitled to
27 vote:

- 28 • holders of claims and equity interests that have been disallowed by an order of the Court;

- 1 • holders of other claims or equity interests that are not “allowed claims” or “allowed equity
- 2 interests” (as discussed above), unless they have been “allowed” for voting purposes.
- 3 • holders of claims or equity interests in unimpaired classes;
- 4 • holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code;
- 5 and
- 6 • holders of claims or equity interests in classes that do not receive or retain any value under
- 7 the Plan;
- 8 • administrative expenses.

9 *Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the*
10 *Confirmation of the Plan and to the Adequacy of the Disclosure Statement.*

11 4. Who Can Vote in More Than One Class

12 A creditor whose claim has been allowed in part as a secured claim and in part as an
13 unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a
14 Plan in each capacity, and should cast one ballot for each claim.

15 B. Votes Necessary to Confirm the Plan

16 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
17 class of creditors has accepted the Plan without counting the votes of any insiders within that class,
18 and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be
19 confirmed by “cram down” on non-accepting classes, as discussed later in Section IV(B)(2).

20 1. Votes Necessary for a Class to Accept the Plan

21 A class of claims accepts the Plan if both of the following occur: (1) the holders of more
22 than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan,
23 and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class,
24 who vote, cast their votes to accept the Plan.

25 A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in
26 amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

1 2. Treatment of Nonaccepting Classes

2 Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the
3 Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A
4 plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code
5 allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the
6 requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the
7 Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that
8 has not voted to accept the Plan.

9 *You should consult your own attorney if a “cram down” confirmation will affect your claim*
10 *or equity interest, as the variations on this general rule are numerous and complex.*

11 C. Liquidation Analysis

12 To confirm the Plan, the Court must find that all creditors and equity interest holders who
13 do not accept the Plan will receive at least as much under the Plan as such claim and equity interest
14 holders would receive in a chapter 7 liquidation. The assets of this estate are made up of the
15 furniture, fixtures and equipment described in the Petition and Schedules, representing the
16 restaurant furnishings for Debtor’s two closed, and two operating restaurant locations, and deposits
17 in the Debtor’s bank accounts. As noted above, Debtor is not party to the Subway® franchise
18 agreements or subleases associated with the restaurants, which are held personally by the
19 Murdocks.

20 The scheduled value of this property of the estate is \$55,214.82. As noted above, there are
21 no less than five creditors claiming to have liens in this property, with claims totaling \$528,097.
22 The Plan provides for the holders of secured claims to receive distributions over time, with interest,
23 in the amount of the value of their lien interests. By definition, therefore, the holders of secured
24 claims will receive under the Plan at least the value of their secured claims in a liquidation. Holders
25 of unsecured claims will receive distributions from excess cash flows generated by the operation of
26 the two restaurants. Due to the grossly undersecured position of the five ostensibly secured
27 creditors, any distributions under the Plan to holders of unsecured claims will exceed any expected
28 recovery in a liquidation.

1 D. Feasibility

2 The Court must find that confirmation of the Plan is not likely to be followed by the
3 liquidation, or the need for further financial reorganization, of the Debtor or any successor to the
4 Debtor, unless such liquidation or reorganization is proposed in the Plan. Based upon the feasibility
5 analysis described below, Debtor believes that this requirement is met.

6 Attached hereto as Exhibits A, B and C are a set of projections and assumptions prepared by
7 the Debtor and its professionals. They should be carefully reviewed. A brief summary of each
8 follows:

9 1. *Effective Date Cash Projection.* The first of the exhibits is a projection of the cash
10 expected to be on hand as of a targeted July 15, 2017 effective date of the Plan, and includes
11 projections of how that effective-date cash is expected to be deployed. This projection incorporates
12 the \$10,000 “Operating Reserve” concept (although it models only partial funding on the effective
13 date), and provides for all expected inflows and outflows prior to July 15, 2017. It models a \$5,000
14 distribution or reserve for administrative expenses (which are expected to total approximately
15 \$25,000, additional payments against which are modeled on a going-forward basis in Exhibit C).
16 No effective-date distribution to general unsecured creditors is anticipated.

17 2. *Projection Assumptions.* Exhibit B describes certain assumptions incorporated into
18 the General Plan Projection attached as Exhibit C. In partial summary:

19 a) *Valuation.* Debtor obtained listing information for three Subway®
20 franchises in Utah and New Mexico that provided information about cash
21 flow and asking price. No listings in Arizona provided cash flow and listing
22 price information. Debtor derived the perceived “multiple” of cash flow
23 represented by the asking price and applied that to the reorganized Debtor’s
24 projected cash flow to estimate a total value for the Debtor’s two restaurant
25 operations. **Debtor estimated this value assuming that the restaurants**
26 **included franchise and sublease rights, which are owned by the**
27 **Murdocks and intended to be contributed as new value.** Accordingly,
28 Debtor reserves the right to assert that the valuation of collateral in this case

1 may be materially less if the Debtor's assets are valued without the franchise
2 and sublease rights.

3 b) *Priority Tax Claim.* Debtor used the scheduled balance owed to
4 ADOR to calculate the monthly payment required under the Code. The Code
5 provides that such priority tax claims may be amortized over a period not to
6 exceed 60 months from the petition date which, in this case, was September
7 20, 2016. Accordingly, the projected amortization is 50 months.

8 c) *Total Unsecured, Non-Priority Claims.* Debtor estimated the total
9 unsecured, non-priority claims by taking the total claims asserted by secured
10 creditors and subtracting the valuation estimate explained above. This
11 subtotal was then added to the scheduled total of non-priority unsecured
12 claims to reach a projected total of all unsecured, non-priority claims. This
13 total was then used in the General Plan Projection to estimate a total
14 distributive rate.

15 3. *General Plan Projection.* Exhibit C is a going-forward projection of the operation of
16 the reorganized Debtor over the 84-month term and subject to the provisions of the Plan. The
17 General Plan Projection begins with the bottom-line conclusions of the Effective Date Cash
18 Projection, and then models the performance of the reorganized Debtor, subject to the assumptions
19 described above. It illustrates the projected ability of the reorganized Debtor to service the
20 estimated amount of secured debt and priority tax debt on Plan terms. It also demonstrates the
21 ability of the reorganized Debtor to make total distributions to general unsecured creditors from
22 excess cash flows over the 84-month term of the Plan of approximately 40%.

23 *You Should Consult with Your Accountant or other Financial Advisor If You Have Any*
24 *Questions Pertaining to These Projections.*

25 V. EFFECT OF CONFIRMATION OF PLAN

26 A. Discharge of Debtor.

27 On the effective date of the Plan, the Debtor shall be discharged from any debt that arose
28 before confirmation of the Plan, subject to the occurrence of the effective date, to the extent

1 specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any
2 debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be
3 limited to the debts imposed by the Plan.

4 B. Modification of Plan

5 The Plan Proponent may modify the Plan at any time before confirmation of the Plan.
6 However, the Court may require a new disclosure statement and/or revoting on the Plan.

7 Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim,
8 the Plan may be modified at any time after confirmation of the Plan but before the completion of
9 payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on
10 claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the
11 amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary
12 to take account of any payment of the claim made other than under the Plan.

13 C. Final Decree

14 Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules
15 of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the
16 Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the
17 case. Alternatively, the Court may enter such a final decree on its own motion.

18 VI. POST-CONFIRMATION FINANCIAL REPORTS

19 The Debtor will file quarterly post-confirmation financial reports pursuant to Fed. R. Bankr.
20 P. 2015(a)(5). Debtor also will provide annual reports to unsecured creditors with annual
21 distributions, as set forth above.

22 VII. INJUNCTION AGAINST COLLECTION FROM GUARANTORS

23 One or more of the Murdocks gave personal guaranties of the debt owed to Ascentium,
24 Direct, Amex Bank, OnDeck and Lendini. In further consideration of their contribution of new
25 value through the assignment of the franchise agreements and subleases associated with Debtor's
26 restaurants, and in consideration of their willingness to serve as general managers for both
27 restaurants for significantly under-market consideration, the Plan shall act as a temporary injunction
28 against the collection from the Guarantors of any claim provided for in the Plan. This injunction

1 shall remain in effect so long as the Debtor is performing under the terms of the confirmed Plan,
2 and if the Plan is fully performed, be dissolved thereafter. To the extent any creditor receives
3 payment from any of the Guarantors, the debt owed shall be reduced accordingly. As a condition of
4 the injunction being granted, the Murdocks shall enter into reasonable agreements tolling any
5 applicable statute of limitations, and preserving all claims, defenses and offsets applicable to any
6 guaranty claims.

7 If creditors are permitted to collect from the Guarantors, the Guarantors will be forced to
8 file their own bankruptcy cases which will jeopardize the ability of the Debtor to remain in
9 operation, as the Guarantors are insiders.

10 DATED this 18th day of May, 2017.

11 **ANDANTE LAW GROUP, PLLC**

12 By: /s/ Daniel E. Garrison

13 Daniel E. Garrison

14 Brian M. Blum

15 *Attorneys for Murdock Empire Group, Inc.*