

1 Gregory C. Nuti (SB 151754)
Kevin W. Coleman (SB 168538)
2 Christopher H. Hart (SB 184117)
NUTI HART LLP
3 411 30TH Street, Suite 408
Oakland, CA 94609-3311
4 Telephone: 510-506-7152
5 Email: gnuti@nutihart.com
kcoleman@nutihart.com
chart@nutihart.com

6 Attorneys for Debtor,
7 PEEK, AREN'T YOU CURIOUS, INC.

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 In re:
12 PEEK, AREN'T YOU CURIOUS, INC.,
13 Debtor.

Case No.: 16-30146 HLB
Chapter 11
**SECOND AMENDED DISCLOSURE
STATEMENT FOR PEEK, AREN'T
YOU CURIOUS, INC.'S CHAPTER 11
PLAN OF LIQUIDATION
(October 6, 2016)**
Date: October 6, 2016
Time: 10:00 a.m.
Place: 450 Golden Gate Avenue
Courtroom 19
San Francisco, CA 94102
Judge: Hon. Hannah L. Blumenstiel

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1 **I. INTRODUCTION AND PLAN OVERVIEW**

2 **A. EXECUTIVE SUMMARY**

3 This Second Amended Disclosure Statement (“Disclosure Statement”) describes how
4 Peek, Aren’t You Curious, Inc.’s Chapter 11 Plan of Liquidation (“Plan”) proposes to pay its
5 creditors. The Disclosure Statement is intended to also provide creditors with information to
6 decide whether to vote to accept or reject the Plan.

7 Peek, Aren’t You Curious, Inc. (“Peek” or “Debtor”) filed a voluntarily bankruptcy on
8 February 5, 2016 (the “Petition Date”). As of its bankruptcy filing, Peek sold high-end
9 children’s clothing through twenty (21) retail stores in ten (10) states (one of which closed on
10 January 23, 2016), a wholesale relationship with Nordstrom department stores, and an
11 Ecommerce platform.

12 Peek had been experiencing operating losses of approximately \$550,000 per month for
13 some time. After exhausting all avenues for obtaining a strategic investor or buyer, in mid-
14 November 2015, Charlotte Russe expressed interest in acquiring several of Peek’s retail
15 locations and manufacturing assets. After a series of meetings and expedited due diligence,
16 Charlotte Russe offered to purchase some of Peek’s assets pursuant to an Agreement for
17 Purchase and Sale of Assets (“APA”) dated February 4, 2016. Under the terms of the APA,
18 Charlotte Russe initially agreed to acquire the following assets:

- 19
- 20 • 8 of Peek’s 21 retail stores¹;
 - 21 • Inventory at Peek’s distribution centers and in transit;
 - 22 • Ecommerce assets and associated contracts; and
 - 23 • Intellectual property associated with the design and manufacturing of
Peek’s brand and product lines.

24 The primary financial goal of the proposed sale was to maximize returns to unsecured
25 creditors by: (a) minimizing operations losses and the accrual of post-bankruptcy rent and other
26 administrative expenses, (b) reducing the pool of lease rejection claims through assignment of
27 leases, and (c) maximizing the recoveries from store inventory not sold to Charlotte Russe.

28 ¹ Charlotte Russe later agreed to purchase (4) four additional retail locations.

1 Peek filed this proceeding in order to close the sale to Charlotte Russe pursuant to §11
 2 U.S.C. § 363 (the “363 Sale”). This Court approved the 363 Sale to Charlotte Russe by an order
 3 dated March 14, 2016. [Docket No. 148]. Peek closed the 363 Sale on March 18, 2016 and
 4 thereafter ceased operations at its nine (9) remaining locations. Thus, Peek has no ongoing
 5 business operations.

6 As will be discussed in more detail below, Peek has on hand funds totaling approximately
 7 \$1.3 million to pay creditors. Peek intends to distribute these funds to creditors according to the
 8 priorities set forth in the Bankruptcy Code, *inter alia*, 11 U.S.C. §507 in a liquidating chapter 11
 9 plan.

10 Further to that end, on August 25, 2016, Peek filed its proposed Chapter 11 Plan of
 11 Liquidation (August 25, 2016) (the “Plan”). The principal purpose of the Plan is to set forth how
 12 any remaining assets of Peek’s estate will be liquidated and the proceeds distributed to its
 13 creditors.

14 The Plan contemplates that the remaining assets of the Debtors’ estate will be distributed
 15 to creditors in the manner dictated by the Bankruptcy Code. That is, creditors who hold liens on
 16 specific assets, if any, will be paid from the proceeds of their collateral. After those secured
 17 claims are satisfied, all unencumbered assets will be distributed in accordance with the priorities
 18 established in Section 507 of the Bankruptcy Code. Where there is not enough cash to pay all
 19 creditors of equal priority in full, pro rata distributions will be made to allowed claim holders,
 20 and no distributions will be made to any creditors that are junior in priority.

21 While actual amounts to be distributed remain uncertain, Peek estimates that if the Plan is
 22 confirmed, creditors will receive the following percentage recoveries on account of their claims:

Class	Description	Approximate Aggregate Dollar Amount of Claims in Class	Estimated Percentage Recovery on the Dollar to Creditor(s) in Class
Class 1	Secured Claims	\$109, 665.13	100%
Class 2	General Unsecured Claims	\$3,014,510.34	21.99% ²

23
 24
 25
 26
 27
 28 ² Assumes the Late Filed Claim is allowed and included in Class 2

... Continued

1	Class 3	Late Filed Claim ³	\$493,261.51	0-21.99 %
2	Class 4	Interest Holders		0%

3
4 In addition, allowed non-classified administrative expense claims (including
5 professionals retained by Peek and holders of tax and other claims entitled to priority under
6 Section 507(a) of the United States Bankruptcy Code will be paid in full.

7 **B. PURPOSE OF THE DISCLOSURE STATEMENT**

8 This Disclosure Statement contains information with respect to Peek and the Plan.
9 Except as otherwise provided herein, capitalized terms used in this Disclosure Statement shall
10 have the meanings set forth in the Plan, which is attached hereto as **Exhibit A**. If there is any
11 conflict between this Disclosure Statement and the Plan, the Plan controls. Pursuant to section
12 1125 of the Bankruptcy Code, this Disclosure Statement is being distributed to you for the
13 purpose of enabling you to make an informed judgment about the Plan. Peek has examined
14 various alternatives and, based on information contained in this Disclosure Statement, and for the
15 reasons set forth below, have concluded that the Plan provides the best prospect for maximizing
16 creditor recoveries.

17 The Disclosure Statement describes the Plan and contains information concerning, among
18 other matters: (1) the history, business, results of operations, management, and liabilities of the
19 Debtors; (2) the sale of substantially all of the Debtors' assets; and (3) potential litigation seeking
20 recovery of assets, and the cash, claims and other assets that are available for distribution under
21 the Plan. Peek urges you to review carefully the contents of this Disclosure Statement and the
22 Plan (including the exhibits to each) before making a decision to accept or reject the Plan.
23 Particular attention should be paid to the provisions affecting or impairing your rights as a
24 Creditor.

25 Generally speaking, creditors who are not getting paid in full when the Plan becomes
26 "effective" are entitled to vote to accept or reject the Plan. Your vote on the Plan is important.

27
28 ³ Turnberry Associates asserted the Late Filed Claim in the total amount of \$493,261.51 (Claim No. 56) filed on
June 22, 2016, after the Claims Bar Date of June 13, 2016.

1 In order for the Plan to be accepted by a Class of Claims, the holders of two-thirds (2/3) in dollar
2 amount and more than one-half (1/2) in number of Allowed Claims in such Class who vote on
3 the Plan must vote for acceptance. Because the holders of Interests are to receive nothing under
4 the Plan, the holders of Class 4 (Interests) are deemed to have rejected the Plan, and, therefore,
5 the votes of such interest holders are not being solicited.

6 Non-acceptance of the Plan may lead to conversion of the case to a proceeding under
7 chapter 7 of the Bankruptcy Code, or to the confirmation of another plan. These alternatives
8 may not provide for a distribution of as much value to creditors as the Plan. Accordingly, Peek
9 strongly encourages all creditors to accept the Plan by completing and returning the enclosed
10 ballot no later than 4:00 p.m. on November 4, 2016.

11 **C. INFORMATION REGARDING THE PLAN**

12 1. Exclusive Source of Information.

13 No representations concerning the Debtor are authorized by the Debtor other than as set
14 forth in this Disclosure Statement.

15 2. Plan Governs Disclosure Statement.

16 Although the Debtor believes that this Disclosure Statement accurately describes the
17 Plan, all summaries of the Plan contained in this Disclosure Statement are qualified by the Plan
18 itself and the documents described therein which are controlling.

19 3. Source of Information.

20 Factual information contained in this Disclosure Statement has been provided by the
21 Debtor and has been obtained from the Debtors' records, except where otherwise specifically
22 noted. All financial information contained in this Disclosure Statement has been prepared by the
23 Debtor. None of the Debtor's attorneys, accountants, or other professionals make any
24 representation regarding that information. The Debtor, however, cannot and does not represent
25 or warrant that the information contained in this Disclosure Statement is free from any
26 inaccuracy. The Debtor has made great efforts to present the information accurately and fairly
27 and believes that the information is substantially accurate. The assumptions underlying the
28 projections contained in this Disclosure Statement concerning sources and amounts of payments

1 to creditors represent the Debtor's best estimates. Because these are only assumptions about or
2 predictions of future events, many of which are beyond the Debtor's control, there can be no
3 assurance that the assumptions will in fact materialize or that the projected realizations will in
4 fact be met. Except as otherwise provided herein, this Disclosure Statement does not reflect any
5 events which occurred subsequent to the date that the Debtor submitted the Disclosure Statement
6 to the Bankruptcy Court for approval.

7 4. Tax Consequences

8 (i) Tax Consequences to Debtor

9 With respect to the tax consequences of the Plan to Peek, it does not expect confirmation
10 of the Plan to have a material impact. The Plan does not seek to avoid payment of any valid
11 claims, and therefore, the Plan will not affect Peek's net operating loss carry forwards, which
12 will remain available to offset any post-bankruptcy income. Because of this, Peek does not
13 anticipate having to recognize or pay state or federal taxes on any significant portion of its
14 income and post-petition activities.

15 (ii) Potential Tax Consequences to Creditors

16 A few generalizations can be made as to the basic tax consequences, although none of the
17 following statements can be treated as advice on the tax treatment to a specific creditor.

18 The Plan contemplates repayment in full to all holders of unclassified, secured and
19 priority "allowed" claims. Therefore, Peek is not of the view that any holder of these types of
20 claims would be permitted to deduct the amount owed by Peek from the creditor's gross income
21 on the basis that it constitutes an uncollectable debt.

22 The Plan contemplates less than full payment to Allowed Unsecured Claims. The extent
23 to which a creditor must recognize loss on repayment of principal amounts owed by Peek
24 depends upon the creditor's tax basis in the debt and overall financial situation. For example, if
25 a creditor provided credit of \$10,000 to Peek and had a tax basis of \$10,000 in the credit
26 advanced, repayment of 25% the principal amount would trigger a 75% loss. In general, such a
27 loss may be credited against income. Each Holder of an Allowed Unsecured Claim is urged,
28 however, to consult its own tax advisors as to the consequences and treatment of any such loss.

1 (iii) Potential Tax Consequences to Equity Holders

2 The Plan provides no payment on account of Equity Holder's investment in Peek. As a
3 general matter, amounts invested in Peek may be considered an investment loss. Each Equity
4 Holder is urged to consult its own tax advisors as to the consequences and treatment of the
5 investment loss.

6 *The foregoing discussion is intended to give general information, but each creditor and*
7 *equity holder must be advised that the tax consequences of the Plan will vary based on the*
8 *individual circumstances of each holder of a Claim. Accordingly, each creditor is strongly*
9 *urged to consult with its own tax advisor regarding the federal, state, local and foreign tax*
10 *consequences of the Plan.*

11 5. Bankruptcy Court Approval.

12 The Bankruptcy Court approved this Disclosure Statement as containing information of a
13 kind and in sufficient detail adequate to enable a hypothetical, reasonable investor to make an
14 informed judgment about the Plan. Under section 1125 of the Bankruptcy Code, this approval
15 enabled the Debtor to send you this Disclosure Statement and solicit your acceptance of the Plan.
16 The Bankruptcy Court has not, however, passed on the Plan itself, nor conducted a detailed
17 investigation into the content of this Disclosure Statement.

18 **D. VOTING INSTRUCTIONS**

19 1. How to Vote.

20 A ballot is enclosed herewith for creditors entitled to vote on the Plan. To vote on the
21 Plan, indicate on the enclosed ballot that you accept or you reject the Plan and sign your name
22 and mail the ballot in the envelope provided for this purpose.

23 In order to be counted, ballots must be completed, signed and returned so that they are
24 received no later than 4:00 P.M. prevailing Pacific Time on November 4, 2016 at the following
25 address:

26 **By U.S. Mail:**

27 Donlin, Recano & Company, Inc.
28 **Re: Peek Kids Ballot Processing**
Attn: Voting Department
PO Box 192016 Blythebourne Station
Brooklyn, NY 11219

1 **By Overnight or Hand Delivery:**

2 Donlin, Recano & Company, Inc.
3 **Re: Peek Kids Ballot Processing**
4 Attn: Voting Department
5 6201 15th Ave
6 Brooklyn, NY 11219

7 Do not send your ballot via facsimile or e-mail.

8 If your ballot is not properly completed, signed and returned as described, it will not be
9 counted. If your ballot is damaged or lost, you may request a replacement by sending a written
10 request to the foregoing address.

11 2. Who May Vote.

12 The Plan divides creditors' claims into three (3) Classes. Class 1, consisting of secured
13 claims. Class 2, consists of general unsecured claims. Class 3 consists of the Late Filed Claim.
14 There is one Class of Interests, Class 4.

15 Classes of creditors which are impaired by the Plan are entitled to vote. A Class is
16 impaired if legal, equitable or contractual rights attaching to the claims or interest of the Class
17 are modified, other than by curing defaults and reinstating maturities. Holders of Claims in
18 Classes 2 and 3 are impaired and entitled to vote on the Plan.

19 In determining acceptances of the Plan, the vote of creditor will only be counted if
20 submitted by a creditor whose claim is an "allowed" claim. Generally speaking, a creditor holds
21 an allowed claim if such claim is duly scheduled by the Debtor as other than disputed, contingent
22 or unliquidated, or the Creditor has timely filed with the Bankruptcy Court a proof of Claim
23 which has not been objected to or disallowed prior to computation of the votes on the Plan. The
24 Ballot form which you received does not constitute a proof of Claim.

25 **E. CONFIRMATION**

26 "Confirmation" is the technical phrase for the Bankruptcy Court's approval of a Chapter
27 11 plan of reorganization/liquidation. At the Confirmation Hearing, in order to confirm the Plan,
28 the Debtor must demonstrate that the Plan satisfies the requirements of section 1129 of the
Bankruptcy Code. If the Bankruptcy Court determines that all of the requirements of section
1129 have been met, the Bankruptcy Court will enter an order confirming the Plan. The Debtor

NUTI HART LLP
411 30TH STREET, SUITE 408
OAKLAND, CA 94609-3311
TELE: 510-506-7152

1 believes that the Plan satisfies all statutory requirements of Chapter 11 of the Bankruptcy Code
2 for Confirmation of the Plan.

3 Voting is tabulated by class. As discussed above, a class of creditors has accepted a plan
4 of reorganization if the plan has been accepted by 2/3 in dollar amount and more than 1/2 in
5 number of creditors holding allowed claims in that class who actually vote to accept or reject
6 such plan. Even if a class of creditors or interests votes against a plan of reorganization, that
7 plan may nevertheless be confirmed by the Bankruptcy Court, notwithstanding the negative vote
8 of that class, so long as certain statutory requirements are met by the plan. This is called a “cram
9 down.” If necessary, the Debtor is prepared to seek confirmation of the Plan through a cram
10 down.

11 The Bankruptcy Court has set a hearing on November 17, 2016 to determine whether the
12 Plan has been accepted by the requisite number of Creditors and whether the other requirements
13 for Confirmation of the Plan have been satisfied. The hearing may be continued from time to
14 time and day to day without further notice. If the Bankruptcy Court confirms the Plan, it will
15 enter the Confirmation Order. Any objections to Confirmation of the Plan must be in writing
16 and must be filed with the Clerk of the Bankruptcy Court and served on counsel for the Debtor
17 and the Office of the United States Debtor on or before November 10, 2016.

18 Counsel on whom objections must be served are:

19 **Counsel for the Debtor**

20 Nutli Hart LLP
21 Attn: Gregory C. Nutli, Esq. / Kevin W. Coleman, Esq.
22 411 30th Street, Suite 408
23 Oakland, CA 94609

24 and

25 **Office of the United States Trustee**

26 Office of the United States Trustee
27 Attn: Donna S. Tamanaha, Esq.
28 Phillip J. Burton Federal Building
 450 Golden Gate Avenue, 5th Flr., #05-0153
 San Francisco, CA 94102

//

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1 **F. DISCLAIMERS**

2 This Disclosure Statement contains information which may bear upon your decision to
3 accept or reject the proposed Plan. Please read this document with care. The purpose of this
4 Disclosure Statement is to provide “adequate information” of a kind, and in sufficient detail, as
5 far as is reasonably practicable in light of the nature and history of the Debtor and the condition
6 of the Debtors’ books and records, that would enable a hypothetical reasonable investor typical
7 of holders of claims or interests of the relevant Class to make an informed judgment concerning
8 the Plan. *See* 11 U.S.C. § 1125(a).

9 For the convenience of creditors, this Disclosure Statement summarizes the terms of the
10 Plan, but the Plan itself qualifies any summary. If any inconsistency exists between the Plan and
11 this Disclosure Statement, the terms of the Plan are controlling.

12 No representations concerning the Debtor’s financial condition or any aspect of the Plan
13 are authorized by the Debtor other than as set forth in this Disclosure Statement. Any
14 representations or inducements made to secure your acceptance other than as contained in or
15 included with this Disclosure Statement should not be relied upon by you in arriving at your
16 decision.

17 The contents of this Disclosure Statement should not be construed as legal, business or
18 tax advice. Each Creditor or Interest holder should consult his or her own legal counsel and
19 accountant as to legal, tax and other matters concerning his or her Claim.

20 **G. PLAN SUMMARY**

21 1. The Plan Classifies Claims

22 The following is a brief summary of the Plan, which is qualified in its entirety by
23 reference to the Plan, attached as **Exhibit A** to this Disclosure Statement.

24 All remaining assets of the Estate shall be liquidated and distributed to creditors as set
25 forth under the terms of the Plan. Under the Plan, claims other than Administrative Claims and
26 Tax Claims entitled to priority are divided into several classes. The several classes of claims fall
27 into three categories: (i) secured claims, (ii) general unsecured non-priority claims; and (iii) the
28

1 Late Filed Claim. There is also one class of Interests consisting of holders of stock, or other
2 equity interests in the Debtors.

3 2. Actual Recoveries to Creditors Are Uncertain.

4 At this time the Debtor cannot predict precisely the timing or amount of any remaining
5 recoveries with any certainty, success inherently depends on facts not currently known and
6 circumstances that may be beyond its control. As of the date of this Disclosure Statement, the
7 Debtor has not identified any Litigation Claims that would materially affect the estimated
8 distributions. Similarly, the Debtor has not identified any potential objections to claims that
9 would materially affect the estimated distribution. The net amount of funds currently available is
10 set forth on the attached Exhibit B. Holders of allowed unsecured claims in Class 2 will receive
11 pro rata distributions of the cash remaining after satisfying all administrative claims, secured
12 claims and priority claims. The Debtor does not believe that there will be sufficient funds to pay
13 Class 2 unsecured non-priority claim holders in full, but rather, creditors in Class 2 will receive
14 approximately 22% on account of their allowed claims. The holder of the Class 3 Late Filed
15 Claim will share in the pro rata distribution of Class 2 *only if* it obtains an order from the
16 Bankruptcy Court allowing the Late Filed Claim. If the Holder of the Late Claim fails to obtain
17 an order allowing its claim as set forth in the Plan, it will not receive any payment under the
18 Plan⁴. The Plan cancels all ownership interests (whether stock, or other interests) in the Debtor.
19 Hence, Interests in Class 4 are entitled to no distributions under the Plan and are deemed to reject
20 the Plan.

21 **II. OVERVIEW OF CHAPTER 11 CASE**

22 This section of the Disclosure Statement discusses the significant events in the Chapter
23 11 case to date, including events leading up to the commencement of the case. Copies of all
24 relevant court papers are on file with the Bankruptcy Court.

25 **A. EVENTS LEADING UP TO THE FILING OF THE CHAPTER 11 CASE**

26 1. Corporate Snap Shot

27
28 ⁴ The distribution analysis set forth on Exhibit B assumes the Late Filed Claim will be allowed and included in Class 2.

1 As of its bankruptcy filing on February 5, 2016 (“Petition Date”), Peek sold high-end
2 children’s clothing through twenty (21) retail stores in ten (10) states (one of which closed on
3 January 23, 2016), a wholesale relationship with Nordstrom department stores, and an
4 Ecommerce platform. In addition to its retail locations, Peek maintained corporate offices at 425
5 Second Street, San Francisco, California and a distribution center located at 2256 MacArthur
6 Blvd., Tracy, CA 95376.

7 Peek’s gross revenues in the fiscal year 2014 were \$26,899,638, and \$28,842,234 in
8 fiscal year 2015. From this revenue, Peek incurred losses in 2014 and 2015 of \$5,033,743 and
9 \$6,670,211, respectively – an average of approximately \$550,000 per month.

10 Peek’s primary assets consisted of its inventory, trademarks and related intellectual
11 property, fixtures located at its stores, office equipment, accounts receivable, and
12 approximately \$1,124,500 in cash. Peek owned no real property – all of its store locations,
13 warehouse facilities, and headquarters space were leased.

14 Peek had approximately 170 employees who were owed accrued wages totaling
15 approximately \$109,000.00 from February 1, 2016 through the Petition Date. In addition, Peek
16 also had incurred approximately \$121,500.00 in severance obligations prior to the Petition Date.
17 Peek has no secured debt or unsecured liabilities to any banks or other financial institutions, and
18 it was current on all of its state, federal and local tax liabilities as of the Petition Date.

19 After an exhaustive two-year search for a strategic investor or buyer in 2014 and 2015, on
20 February 4, 2016, Peek entered into an asset purchase agreement with Charlotte Russe, Inc. to
21 sell its inventory, trademarks, store fixtures, Ecommerce platform, and leases for eight (8) of the
22 retail stores⁵. The primary goal of the proposed transaction with Charlotte Russe was to
23 maximize returns to unsecured creditors by: (a) minimizing the accrual post-bankruptcy
24 operational losses, rent and other administrative expenses, (b) reducing the pool of lease
25 rejection claims through assignment of those leases, and (c) maximizing the recoveries from
26 store inventory not sold to Charlotte Russe. As set forth below, Peek closed the sale to Charlotte
27 Russe on March 18, 2016.

28 ⁵ During the bankruptcy proceedings, Charlotte Russe agreed to buy an additional four (4) retail locations.

1 2. The Birth of Peek

2 After working in retail sales since of the age of 16, founder and former CEO, Tina
3 Canales began her fashion career with The GAP. She began her 12-year tenure at the The Gap
4 as assistant store manager and subsequently held several field positions including manager of its
5 high-profile Melrose Avenue retail location. She was later promoted to merchandising, holding
6 a variety of posts throughout the brand’s many divisions. As a senior merchant, Ms. Canales
7 gained experience identifying trends and sourcing opportunities, in planning, production, design
8 and delivery of product. Ultimately, she was promoted to Vice President of Women’s
9 merchandising, a \$4 billion brand division, with both domestic and international responsibilities.

10 After leaving The Gap in 2001, Ms. Canales, along with a partner, formed Peek in 2006
11 based on a concept to address a void that she believed existed in the children’s clothing market:
12 a premium children’s brand that offers high quality contemporary clothes. Peek’s merchandise
13 addressed the same considerations that adults demanded and expected in their wardrobe and that
14 kids would love to wear: thoughtful detail, luxurious materials and interesting finishes that come
15 together in durable, easy care styles that appeal to a child’s sensibility and comfort while
16 appealing to an adult’s sense of style. Additionally, Peek retail locations also featured a curated
17 collection of books, toys and accessories to compliment the clothing collection in a sophisticated
18 and fun environment. The name “Peek... Aren’t You Curious” stems from a concept related to
19 this product offering and the intersection of an adult’s nostalgic “peek” back into their own
20 childhood, while “peeking” forward into their child’s future.

21 Peek’s business plan was developed with three channels of distribution: company owned
22 and operated stores, wholesale, and online Ecommerce. Six distinct proprietary sub-branded
23 product lines were created to allow style and personality separation which would also offer
24 distinct wholesale opportunities. The sub brands were: Fleur des Champs, Williams and Sons,
25 Sgt. Fletcher, Surf Royalty, Craft Dungarees and Little Peanut.

26 Peek generated roughly 60% of its revenue from its retail locations, 8% from through
27 Ecommerce, and 32% through wholesale distributions. As noted above, gross revenue in fiscal
28 year 2014 and 2015 were approximately \$26.8 million and \$28.8 million respectively, but from

1 this revenue Peek incurred losses in 2014 and 2015 of \$5,033,743 and \$6,670,211, respectively –
2 an average of approximately \$550,000 per month.

3 3. Peek's Financial History

4 In 2006, Peek was initially formed as a limited liability company with \$3.0 million in
5 capital contributed by its founders. With the initial capital, Peek opened its first three physical
6 stores, the first of which was opened in February of 2007 and located in Santa Monica, CA. In
7 October 2007, Peek opened its second store in Corte Madera, CA, followed by a third store in
8 November, 2007 in Scottsdale, AZ. Peek also launched its Ecommerce site that same year.

9 After this initial launch, Peek sought outside investor capital and closed a \$5.15 million
10 first round of funding in September 2007. As a result of this financing, Peek converted to a C
11 Corp.

12 In 2008, Peek opened four additional stores: (1) Fashion Island in Newport Beach CA.
13 (April), (2) Americana at Grand in Glendale CA (May), (3) Fashion Valley in San Diego CA
14 (August), and (4) Northpark in Dallas TX (October). Peek continued to develop Ecommerce and
15 launched its wholesale channel, supplying several specialty boutiques and Barney's New York.

16 In 2008, Peek closed a second financing for \$10 million from Mousseluxe SARL. In late
17 2008, however, Peek began to suffer a series of setbacks related to the downturn caused by the
18 Great Financial Crisis. This change in the economic environment resulted in Peek receiving an
19 inordinate number of wholesale order cancellations against product for which Peek was already
20 obligated and several unpaid wholesale invoices. In response to the deteriorating overall
21 economic situation in 2008 and 2009, Peek began to renegotiate the existing rent structures,
22 evaluate store locations, focus on building instore staff and close down the then un-profitable
23 wholesale channel. Ultimately Peek shuttered three retail locations⁶, while it negotiated rent
24 relief on the remaining stores.

25 Peek soon recognized that as a small vertical retailer it lacked economies of scale to
26 achieve target margin efficiency or to internally support the needed infrastructure in areas of
27 Ecommerce, Real Estate, IT, Logistics and Marketing. Peek determined that the best course was

28 ⁶ One each in Glendale CA (November 2009), Roseville (July 2010), and Fashion Valley (May 2011).

1 to identify strategic partners. In August of 2010, Peek partnered with Nordstrom Inc., with Peek
2 providing Nordstrom with Peek designed product through its wholesale channels, thus increasing
3 Peek's economy of scale and increasing margin efficiency. Nordstrom also agreed to assist in
4 Marketing, IT, Ecommerce and Real Estate.

5 Equally as important, Nordstrom and Mousseluxe SARL each made an additional equity
6 investment in the company to finance its inventory purchases and assure that Peek was
7 financially viable. The financing was structured as a common stock investment.

8 Peek's wholesale relationship with Nordstrom quickly grew from an initial product
9 offering in 20 Nordstrom stores in March of 2011, to 50 in May 2011 and to all 115 Nordstrom
10 stores by July 2011. In 2011, Peek generated \$1.7 million in revenue from this relationship.

11 In 2012, Peek again sought to grow, opening four stores: (1) University Village, Seattle
12 WA (May 2012), (2) Fashion Place, Murray UT (August 2012), (3) Fashion Square, Scottsdale
13 AZ (August 2012), and (4) Bellevue Square, Seattle WA (October 2012).

14 In 2013, Mousseluxe and Nordstrom committed to invest \$6.4 million each in additional
15 common equity to fund store growth. Peek opened an addition seven (7) new stores in 2013: (1)
16 University Center in La Jolla CA (April 2012), (2) Chestnut Street in San Francisco CA (August
17 2013), (3) Houston Galleria in Houston TX (September 2013), (4) Park Meadows in Denver CO
18 (September 2013), (5) Northbrook Court in Northbrook IL (October 2013), (6) Oakbrook in
19 Oakbrook, IL (November 2013), and (7) Merrick Park in Coral Gables FL (December 2013).

20 In 2014, Peek engaged the investment bank of William Blair & Company to advise and
21 assist in seeking growth equity capital to continue its store build out, make a significant
22 Ecommerce investment and execute on much needed marketing initiatives in order to become a
23 fully realized Omni-channel retailer. William Blair expressed high confidence that the thorough
24 growth plan would yield several prospective, competitive investor partners. However, after more
25 than eight months of management focus on due diligence, investor information and meetings, no
26 viable investor emerged. During this period, Mousseluxe and Nordstrom each committed up to
27 an additional \$6 million in convertible bridge notes to provide working capital until a strategic
28 partner was identified.

1 Peek opened five new locations in anticipation of obtaining additional growth capital: (1)
2 Phipps Plaza in Atlanta GA (April 2014), (2) Damen Avenue in Chicago IL (May 2014), (3) The
3 Woodlands in TX (September 2014), (4) Mall of America in Minneapolis MN (October 2014)
4 and (5) Aventura in Miami FLA (November 2014). Peek also continued to invest in
5 infrastructure and headcount. Peek's operating loss, however widened to \$5 million, driven
6 largely by new store operating costs, key talent upgrades to set the foundation for growth, along
7 with consulting and other onetime investments. When William Blair failed to source any viable
8 investors, Peek targeted operational initiatives to develop a five-year plan to profitability by early
9 2018. Based on this plan, Mousseluxe and Nordstrom funded an additional \$4.6 million,
10 converted to equity existing bridge notes of \$10.7 million and structured another equity round of
11 funding. The early 2015 plan proved to be overly optimistic as Peek faced a retail environment
12 in which competitors aggressively competed on price forcing Peek to mark down its prices more
13 aggressively in order to monetize product inventory, which in turn caused a sizeable impact to
14 sales, margin, profitability and cash reserves.

15 By late July 2015, Peek identified a need to close several stores and reduce headcount.
16 But even with these reductions, the company would be cash challenged by late 2015/early 2016.
17 At this point, Mousseluxe and Nordstrom, Peek's two majority shareholders, indicated that they
18 were not interested in making further investments in Peek, but Nordstrom was open to any
19 solution that preserved the wholesale relationship.

20 4. Marketing of Assets

21 In mid-August, Peek and Nordstrom investigated an acquisition of Peek by Nordstrom.
22 A proposal was developed that would close 10 unprofitable retail locations, leverage
23 Nordstrom's scale, operational and functional expertise and reduce Peek's head count. The
24 savings generated were expected to yield positive EBITDA in 2016. On September 28, 2015,
25 Nordstrom, after serious internal consideration, declined to pursue the opportunity. It should be
26 noted again that Nordstrom had made a substantial investment in Peek, served on Peek's board,
27 and had continued interest in continuing the Peek wholesale business. It therefore seemed to be
28

1 best positioned to understand the value proposition in acquiring a scaled back version of Peek,
2 and so its decision not to proceed raised questions about Peek’s overall value.

3 On September 30, 2015, Peek’s board convened to discuss options, including ceasing
4 operations and filing Chapter 7 bankruptcy by the end of fiscal year 2015, while continuing to
5 pursue any “last ditch” investors or acquirers. Peek’s Board Chair, CEO and CFO had a series of
6 meetings with William Blair to identify potential investor/acquirers and define a timeline. It was
7 quickly apparent that the process to identify, engage and complete a transaction would be too
8 lengthy, too costly and held little to no probability of success. As a result, Peek terminated its
9 relationship with William Blair but continued to independently seek an investor/acquirer. In mid-
10 October, Peek needed to decide whether to order Spring inventory for both retail locations and
11 Nordstrom’s wholesale purchase to be delivered beginning in January, a financial commitment
12 of several million dollars. In the normal course, Peek places its orders for product with its
13 overseas manufacturers several months in advance of when the product is needed in the stores
14 for the next season. Thus, Spring inventory is ordered in mid-October, with deliveries starting
15 the following January and continuing through February. In general, Peek becomes financially
16 obligated for inventory from the manufacturer upon each shipment being invoiced and placed in
17 transit to Peek’s distribution center. For inventory sold at wholesale, e.g. to Nordstrom,
18 Nordstrom becomes obligated to Peek upon the shipment from Peek to Nordstrom. Peek
19 struggled whether to place its Spring inventory orders given the uncertainty of whether it would
20 still be operating by the time the shipments were ready. While Peek was not legally obligated for
21 the product until shipped, it did not want its manufacturers to incur production costs if Peek
22 would be ceasing operations prior to the Spring season. With the Spring 2016 inventory
23 commitments looming, Nordstrom verbally agreed, in essence, to guarantee acceptance of 100%
24 of Peek’s Spring 2016 inventory production. In addition to purchasing inventory through the
25 wholesale relationship, Nordstrom agreed to pay for inventory originally intended for Peek’s
26 own retail locations in the event Peek shut down at year end. This gave Peek some comfort in
27 ordering Spring inventory for its retail locations and extended the time Peek had to seek another
28 investment/acquisition solution.

1 In late October, early November, Peek met with the Gap Inc. to gauge any potential
2 interest the Gap may have had in either investing or acquiring Peek. After consideration, Gap
3 Inc. also passed on the opportunity.

4 5. Purchase Offer from Charlotte Russe, Inc.

5 In mid-November, Peek was approached by Charlotte Russe, to discuss Charlotte Russe's
6 potential interest in investing in or acquiring Peek. Charlotte Russe had learned of Peek's
7 situation from sources within the industry. After a series of meetings and expedited due
8 diligence which began in earnest in early January 2016, Charlotte Russe offered to purchase
9 some of Peek's assets pursuant to an Agreement for Purchase and Sale of Assets ("APA") dated
10 February 4, 2016. Under the terms of the APA, Charlotte Russe agreed to acquire the following
11 assets:

- 12 • 8 of Peek's 21 retail stores⁷
- 13 • Inventory, trade fixture and other operating assets;
- 14 • Inventory at Peek's distribution centers and in transit;
- 15 • Ecommerce assets and associated contracts;
- 16 • Assumption of contracts for inventory ordered but not yet delivered;
- 17 • \$597,654 account receivable owed by Nordstrom for inventory sales (but it should
18 be noted that Charlotte Russe assumed an \$850,438 corresponding liability which
19 represents Peek's inventory purchase obligation to the vendors); and
- 20 • Intellectual property associated with the design and manufacturing of Peek's
21 brand and product lines.

22 6. The Sale to Charlotte Russe and Cessation of Business

23 Peek filed this proceeding on February 5, 2016 and immediately sought Court approval to
24 (1) close the proposed transaction with Charlotte Russe pursuant to 11 U.S.C. § 363 (the "363
25 Sale"); and (2) conduct going out of business sales and cease operations at the retail locations not
26 included in the 363 Sale. The Court approved the procedures and timing for conducting the 363
27

28 ⁷ Charlotte Russe later agreed to purchase an additional four (4) retail locations during the process of obtaining Court approval of the sale.

1 Sale pursuant to its Order Granting Motion to Approve Bidding and Sale Procedures and Setting
2 Sale Hearing Date dated February 16, 2016 [docket no. 64], setting a hearing for March 10, 2016
3 to consider the 363 Sale.

4 Several landlords raised formal and informal objections to the terms of the 363 Sale.
5 Peek and Charlotte Russe engaged these landlords in discussions in an attempt to resolve their
6 objections. These discussions were successful and led to an amendment to the APA whereby
7 Charlotte Russe agreed to purchase four (4) additional retail locations and the assumption of their
8 related leases. The Court approved the 363 Sale at the March 10 hearing and by its subsequent
9 Order Granting Motion to Approve Sale Free and Clear of Liens and Interests dated March 14,
10 2016 [docket no. 148].

11 Peek closed the 363 Sale with Charlotte Russe on March 18, 2016. Peek wound down its
12 operations at its other nine (9) retail locations, rejected the associated leases, and ceased
13 operations. Thus, Peek has no ongoing business operations.

14 The consideration provided by Charlotte Russe was an assumption of Peek's obligations
15 under the leases for the retail locations and the various other executory contracts, and its liability
16 for so-called "Spring 2" inventory purchases that, as noted above, was approximately \$850,000.
17 Charlotte Russe further agreed to pay Peek the amount of all security deposits held by landlords
18 at the retail locations it acquired that in the aggregate total in excess of \$48,000.00 (which would
19 be unavailable to creditors if the leases were rejected), to pay an additional \$10,000 for fixtures
20 located at some of the closed stores, and reimburse Peek for certain pre-paid expenses.

21 Although the transaction did not generate substantial cash, it did reimburse Peek for the
22 potential administrative cost of the post-petition Spring inventory deliveries, and relieve Peek
23 from substantial lease and contract rejection damage claims. Most importantly, approval of the
24 sale stopped the operational cash drain of \$550,000 per month and allows Peek now to distribute
25 more cash to a smaller pool of unsecured creditors than if all 20 remaining stores were closed.

26 At this point, Peek has no ongoing operations. All Peek's assets have been liquidated and
27 converted to Available Cash. Peek is currently analyzing potential Litigation Claims, including
28 Avoidance Actions, and Claim Objections. As of the date of this Disclosure Statement, Peek has

1 not identified any such claims that would materially alter the projected distributions set forth
2 herein.

3 **III. DESCRIPTION OF THE PLAN**

4 A discussion of the principal provisions of the Plan as they relate to the treatment of
5 Classes of Allowed Claims is set forth below. The discussion of the Plan which follows
6 constitutes a summary only, and should not be relied upon for voting purposes. You are urged to
7 read the Plan in full in evaluating whether to accept or reject the Plan proposed by the Debtor. If
8 any inconsistency exists between this summary and the Plan, the terms of the Plan shall control.

9 **A. DESCRIPTION OF CLASSES**

10 The Plan divides Creditors into three (3) Classes. Creditors with similar Claims are
11 placed in the same Class. There is one (1) Class of Interests under the Plan.

12 **Class 1 Claims (Unimpaired)**. Class 1 consists of creditors holding valid lien claims
13 against property of the Estate.

14 **Class 2 Claims (Impaired)**. Class 2 consists of general unsecured claims. Class 2
15 claims are Impaired.

16 **Class 3 Claims (Impaired)**. Class 3 consists of the Late Filed Claim. The Class 3 claim
17 is Impaired.

18 **Class 4 Interests (Impaired)**. Class 4 consists of Equity Interests in the Debtor. Class 4
19 Equity Interests are Impaired.

20 **B. TREATMENT OF UNCLASSIFIED CLAIMS**

21 **Administrative Claims.**

22 Administrative Claims will fall in one of two categories: (1) administrative claims
23 asserted by general creditors of the estate and (2) administrative claims held by professionals
24 employed by the Debtor in these proceedings. If the Administrative Claim is held by a general
25 creditor of the estate and it remains unpaid, such creditor must file an Administrative Claim no
26 later than thirty (30) days of entry of the Confirmation Order. If the Administrative Claim is
27 held by a professional employed by the Debtor in this case, a Fee Application must be filed no
28

1 later than sixty (60) days after entry of the Confirmation Order. An Administrative Claim for
2 professional fees will be paid if and to the extent that it is Allowed by the Bankruptcy Court.

3 Each holder of an Allowed Administrative Claim will receive either a single payment for
4 its Allowed Administrative Claim or another amount as agreed with the Debtor. The payment
5 will be made on the Effective Date or upon allowance of the Administrative Claim, whichever
6 occurs later. The Payment will be from the Available Cash upon Confirmation, and or proceeds
7 from the recoveries from Remaining Assets. Aggregate unpaid Administrative Claims is
8 currently estimated be approximately \$702,805.26⁸. See Exhibit B.

9 Priority Tax Claims

10 (i) To the extent not paid prior to the Effective Date, all Tax Claims against the
11 Debtors that are entitled to priority under Section 507(a)(8) shall be paid in full with interest at
12 the applicable rate determined under non-bankruptcy law pursuant to 11 U.S.C. § 511 on the
13 later of: (a) the Effective Date, or (b) the date the Tax Claim is allowed by a Final Order.

14 (ii) Several local taxing authorities have filed proofs of claim for taxes due,
15 asserting that these claims are entitled to treatment as secured claims.⁹ The Plan defines these
16 claims as Asserted Secured Tax Claims. There is, however, no property of the estate to which
17 the Asserted Secured Tax Claims attach. This is because the Debtor no longer has rights in any
18 leaseholds – they have all been rejected or assumed and assigned to Charlotte Russe – and the
19 Court’s March 14, 2016 order approving the sale to Charlotte Russe provided for the attachment
20 of only the lien asserted by Dallas County, Texas to the proceeds received upon sale. Although
21 not entitled to treatment as secured claims, each Asserted Secured Tax Claim shall be treated as a
22 priority unsecured claim pursuant to 11 U.S.C. §507(a)(8). To the extent not paid prior to the
23 Effective Date, all Asserted Secured Tax Claims against the Debtors shall be paid in full in the
24 amount as set forth in the Claim with interest at the applicable rate determined under non-
25 bankruptcy law pursuant to 11 U.S.C. § 511 on the later of: (a) the Effective Date, or (b) the date
26 the Tax Claim is allowed by a Final Order. Any Claim Holder that filed an Asserted Secured

27 ⁸ Sum of Administrative Costs (\$93,250.00), Professional Administrative Costs (\$484,145.22) and Other Administrative Costs
28 (\$125,410.04).

⁹ A list of the Asserted Secured Tax Claims is set forth on Exhibit A to the Plan.

1 Tax Claim in an estimated amount and asserts amounts in addition to the amounts set forth in its
2 filed Claim shall file an amended claim asserting such additional amounts within thirty (30) days
3 of the Effective Date. The Debtor shall pay or object to any such claim for additional amounts
4 within thirty (30) days.

5 Aggregate unpaid Priority Tax Claims and Asserted Secured Tax Claims is
6 approximately \$ 131,044.39. *See* Exhibit B.

7 U.S. Trustee Fees

8 The Debtor shall pay in cash in full on the Effective Date any statutory fees then owing
9 and unpaid to the U.S. Trustee, or to the Bankruptcy Court. After the Effective Date, the
10 Liquidating Debtor shall pay a quarterly fee to the U.S. Debtor, for deposit into the U.S.
11 Treasury, for each quarter (including any fraction thereof) until this chapter 11 case is converted,
12 dismissed, or closed by entry of a final decree, pursuant to Section 1930(a)(6) of Title 28, United
13 States Code.

14 **C. TREATMENT OF CLASSIFIED CLAIMS**

15 Secured Claims.

16 **Class 1— Allowed Secured Claims (Unimpaired):** Allowed Secured Claims will
17 receive payment in full from the funds they currently hold securing such claims and shall not
18 receive any further payments under the Plan on account of the secured portion of any Claim.
19 Specifically, the Allowed Secured Claims of IMI Market Street, Bellevue Square, and HG
20 Galleria LLC shall be paid in full from the funds in their possession securing such claims. The
21 Allowed Secured Claim of Taxing Authorities Dallas County shall be paid from the funds set
22 aside pursuant to paragraph 11 of the Bankruptcy Court’s Order Granting Motion to Approve
23 Sale Free and Clear of Liens and Interests [Docket No. 148].

24 Unsecured Claims.

25 **Class 2 – General Unsecured Claims (Impaired):** Class 2 claims shall share in pro rata
26 distributions from Available Cash, after paying all unclassified claims, allowed secured claims,
27 administrative claims, and priority claims in full.

28

1 Late Filed Claim.

2 **Class 3 –Late Filed Claim (Impaired):** The Late Filed Claim shall receive no
3 distribution *unless* within sixty (60) days of the Confirmation Order, the Claim Holder of the
4 Late Filed Claim obtains an order from the Bankruptcy Court allowing the Late Filed Claim, in
5 which case the Late Filed Claim shall be placed in Class 2 and share in pro rata distributions
6 from Available Cash.

7 Interests.

8 **Class 4 – Equity Interests of the Debtor (Impaired):** Equity Interests of the Debtor
9 shall receive no distributions and retain no interest.

10 **D. IMPLEMENTATION OF THE PLAN**

11 The Plan will be implemented as follows:

12 1. Assets Shall Remain Property of the Estate

13 Pursuant to Section 1141(b) of Title 11, upon Confirmation all assets of the Debtor or
14 Debtor’s Estate shall remain in the Debtor’s Estate to be distributed by the Debtor according to
15 the terms of the Plan. The Debtor will be deemed to have all powers, authority and
16 responsibilities of a Debtor under sections 704, 108 and 1106 of the Bankruptcy Code and Rule
17 2004 of the Bankruptcy Rules. All remaining property of the Estate will be distributed by the
18 Debtor pursuant to the Plan free and clear of all Liens. From and after the Effective Date, the
19 Debtor may dispose of assets free of any restrictions contained in Sections 361, 363, 364, or 365
20 of the Bankruptcy Code, provided however, that disposition of any proceeds is made in
21 accordance with the Plan.

22 The Debtor may retain counsel and other professionals as necessary in any matter related
23 to the administration of the Remaining Assets or the performance of its duties under the Plan.
24 After the Effective Date, professional fees and other expenses incurred by the Debtor will be
25 paid from Available Cash after Confirmation, or proceeds from the recoveries from Remaining
26 Assets subject to Court approval upon notice and hearing.

27
28

1 The Debtor shall be responsible for and act as the Distribution Agent for all creditors
2 receiving distributions under the Plan, but may utilize the services of Donlin Recano & Company
3 for the actual cutting of checks and mailing them to Claimants.

4 2. Preservation of All Causes of Action

5 Except as otherwise provided in the Plan or in any contract, instrument, release or
6 agreement entered into in connection with the Plan, the Debtor will retain and may exclusively
7 enforce and prosecute any Litigation Claims that the Debtors or the Estate may have against any
8 person or entity in accordance with section 1123(b) of the Bankruptcy Code. The Debtor may
9 pursue such retained Litigation Claims in accordance with the best interests of the creditors or
10 the Estate.

11 **E. CLAIMS AND DISTRIBUTIONS**

12 1. Administrative Reserve

13 On the Effective Date, the Debtor will establish a reserve for all Allowed and Contested
14 Administrative Claims to the extent such Claims are not paid on the Effective Date (the
15 Administrative Claims Reserve”) which is funded by the Available Cash. The Administrative
16 Reserve will also serve to pay projected costs and expenses of administering the Estate after the
17 Effective Date (the “Administrative Reserve”). The Debtor will make payments from the
18 Administrative Claims Reserve to holders of Administrative Claims as soon as contested claims
19 become Allowed Administrative Claims. The Debtor estimates that the Administrative Claims
20 reserve will be approximately \$150,000.

21 2. Estimation of Claims

22 In order to effectuate distributions pursuant to this Plan and avoid undue delay in the
23 administration of the Chapter 11 cases, the Debtor after notice and a hearing (which notice may
24 be limited to the holder of such Contested Claim), can seek an order of the Bankruptcy Court to
25 estimate or limit the amount of property that must be withheld from distribution on account of
26 Contested Claims; if the Bankruptcy Court first determines whether such Claims can be
27 estimated under the Bankruptcy Code and establish the timing and procedures for this estimation.
28

1 3. Distribution Procedures

2 Notwithstanding any provision to the contrary in the Plan, distributions may be made in
3 full or on a pro rata basis depending on (i) the amount of the Allowed Claims in a class, (ii) the
4 cash available to Allowed Claims in the class, and (iii) the Debtor's projection of reserves
5 necessary to fund disputed claims and pay future costs of administration.

6 The Plan provides that the Debtor will commence making interim distributions to holders
7 of Allowed Class 2 claims within 180 days of the Plan Effective Date, provided however, that
8 the deadline for making the first interim distribution may be extended upon further order of the
9 Bankruptcy Court. Except as noted below, the Debtor will make payments to the holders of
10 Allowed Claims: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by
11 wire transfer from a domestic bank, at the Debtor's option, and (b) by first-class mail (or by
12 other equivalent or superior means as determined by the Debtor).

13 4. Setoffs and Recoupment

14 The Debtor may, but will not be required to, set off against or recoup from the payments
15 to be made pursuant to the Plan in respect of a Claim, any claim of any nature whatsoever the
16 Debtor or the Estate may have against the holder, but neither the failure to do so nor the
17 allowance of any Claim will constitute a waiver or release by the Debtor or the Estate of any
18 such claim.

19 5. Full and Final Satisfaction

20 On the Effective Date, all Debts of the Debtors will be deemed fixed and adjusted
21 pursuant to the Plan and the Debtors will have no further liability on account of Claims or
22 Interests as set forth in the Plan. All payments and all distributions made by the Debtor under
23 the Plan will be in full and final satisfaction, settlement and release of all Claims; provided,
24 however, that nothing contained in the Plan will be deemed to constitute or result in a discharge
25 of the Debtors under Bankruptcy Code section 1141(d).

26 6. Objections to Claims

27 After the Effective Date, the Debtor will have the authority to file, settle, compromise,
28 withdraw or litigate to judgment objections to Claims. Unless otherwise provided in the Plan or

1 ordered by the Bankruptcy Court, all objections to Claims will be filed no later than ninety (90)
2 days after the Effective Date, unless that deadline is extended by the Court.

3 Notwithstanding any other provision of the Plan, no payment or distribution will be made
4 with respect to any Claim until it becomes an Allowed Claim. Unless a Claim is specifically
5 Allowed under the Plan, the Debtor reserves any and all objections to Claims, whether secured or
6 unsecured, including any objection to the validity or amount of alleged liens and security
7 interests, whether under the Bankruptcy Code, other applicable law or contract.

8 **F. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

9 Under section 365 of the Bankruptcy Code, a debtor may assume or reject executory
10 contracts and unexpired leases. At the present time, the Debtor is not aware of any pre-
11 bankruptcy contracts or leases that have not been either assumed or rejected. Nevertheless,
12 should an unassumed / rejected contract or lease exist, the Plan provides that on the Effective
13 Date, each such executory contract and unexpired lease that exists between the Debtor and any
14 person that was not assumed or rejected before the Confirmation Date with the approval of the
15 Bankruptcy Court, or for which the Debtor has not filed a motion to assume or reject before the
16 Confirmation Date, is rejected. Entry of the Confirmation Order by the Bankruptcy Court will
17 constitute approval of such rejections pursuant to section 365(a) of the Bankruptcy Code.

18 Notwithstanding the preceding paragraph, on the Effective Date, each Non-Disclosure
19 Agreement that exists between the Debtors and any person, to the extent that it constitutes an
20 executory contract, is assumed pursuant to the Plan. Entry of the Confirmation Order by the
21 Bankruptcy Court will constitute approval of such assumptions pursuant to section 365(a) of the
22 Bankruptcy Code.

23 Claims created by the rejection of any executory contract or unexpired lease (including
24 claims under section 365(d)(3) of the Bankruptcy Code) must be served on the Debtor and filed
25 with the Bankruptcy Court by the earlier of thirty (30) days after the Confirmation Date or such
26 earlier date previously set by order of the Bankruptcy Court. Any Claims not filed within such
27 time will be forever barred from assertion against the Debtors' Estate. Unless otherwise ordered
28

1 by the Bankruptcy Court, all the Claims arising from the rejection of executory contracts will be
2 treated as Class 2 Claims under the Plan to the extent they become Allowed Claims.

3 Notwithstanding the foregoing, the Court's Order Granting Motion To Assume and
4 Assign Executory Contracts and Unexpired Leases In Connection With the Sale of Assets
5 ("Assumption Order") [Docket No. 147] and Order Granting Debtor's Omnibus Motion For
6 Authorization To Reject Certain Leases ("Rejection Order")[Docket No. 145] shall remain in full
7 force and effect and the executory contracts subject to the Assumption Order and Rejection
8 Order shall receive the treatment as set forth therein.

9 **G. CONDITIONS TO EFFECTIVENESS**

10 The Plan will not become effective unless and until the Bankruptcy Court has entered the
11 Confirmation Order approving the Plan in all respects.

12 **H. RETENTION OF JURISDICTION**

13 The Plan will in no way limit the Bankruptcy Court's post-confirmation jurisdiction as
14 provided under the Bankruptcy Code. Pursuant to sections 105(a) and 1142 of the Bankruptcy
15 Code, the Bankruptcy Court will retain and have exclusive jurisdiction (to the extent granted by
16 applicable law, including any provisions permitting mandatory or discretionary withdrawal of
17 such jurisdiction) over any matter (i) arising under the Bankruptcy Code, (ii) arising in or related
18 to the Chapter 11 Cases or the Plan, or (iii) that relates to the following:

- 19 • Allowance, disallowance, reconsideration, estimation, compromise, settlement,
20 adjustment, treatment, or liquidation of claims and objections thereto;
- 21 • Allowance of Claims and requests for payment of Administrative Expenses of the
22 Estate;
- 23 • The rights, title, or interest of the Debtor, as modified or specified under the Plan,
24 in any property, including liens thereon;
- 25 • Resolution of controversies and disputes, including disputes regarding
26 interpretation of the Plan and the Confirmation Order, and the correction of any
27 mistake, defect, or omission regarding interpretation or enforcement of the Plan
28 and the Confirmation Order;

- 1 • Modification(s) of the Plan pursuant to Section 1127 of the Bankruptcy Code;
- 2 • Adjudication of any actions brought by the Debtor or on behalf of the Debtor to
- 3 enforce any right or recover any claim created, granted, or preserved under the
- 4 Plan, including, but not limited to, Independent Claims and Causes of Action;
- 5 • Entry of orders in aid of implementation of this Plan;
- 6 • Such other matters for which jurisdiction is provided under the Bankruptcy Code,
- 7 the Plan the Confirmation Order, or other applicable law; and,
- 8 • Entry of a final decree closing the Chapter 11 Case.

9 **I. POST CONFIRMATION ISSUES**

10 1. Payment of Statutory Fees

11 All fees payable through the Effective Date pursuant to section 1930 of Title 28 of the
12 United States Code will be paid on or before the Effective Date. All fees payable after the
13 Effective Date pursuant to section 1930 of Title 28 of the United States Code shall be paid by the
14 Liquidating Debtor.

15 2. Exculpation

16 Neither the Debtor, nor any of its employees, attorneys, advisors, members, shareholders,
17 fiduciaries or agents (including any professionals retained by such persons), nor any of their
18 respective predecessors or successors, will have or incur any liability as set forth in 11 U.S.C
19 §1125(e) to any holder of a Claim or Interest or any other entity for any act or omission in
20 connection with, or arising out of, the Chapter 11 case, the pursuit of approval of the Disclosure
21 Statement or the solicitation of votes for or confirmation of the Plan or consummation or
22 administration of the Plan or the property to be distributed under the Plan.

23 3. Distributions in Satisfaction and Binding Effect of Plan

24 Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after
25 the Confirmation Date, the provisions of the Plan will bind any holder of a Claim against, or
26 Interest in, the Debtor, the Estate and their respective successors or assigns, whether or not the
27 Claim or Interest of such holders is impaired under the Plan and whether or not such holder has
28 accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the

1 Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and
2 shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity
3 (including, without limitation, any trustee appointed for the Debtors under Chapters 7 or 11 of
4 the Bankruptcy Code). All creditors will continue to be barred from commencing or continuing
5 legal action to collect the debts owed to them, however, all creditors will retain the right to
6 commence legal actions in the Bankruptcy Court to enforce the rights granted to them under the
7 Plan.

8 4. Final Order

9 Except as otherwise expressly provided in the Plan, any requirement in the Plan for a
10 Final Order may be waived by the Debtors upon written notice to the Bankruptcy Court. Such
11 waiver will not prejudice the right of any party in interest to seek a stay pending appeal of any
12 order that is not a Final Order.

13 5. Amendments and Modifications

14 To the fullest extent permitted under section 1127 of the Bankruptcy Code, the Plan may
15 be altered, amended or modified at any time prior to the Effective Date by the Debtor. At any
16 time after the Effective Date, the Debtor may amend or modify the terms of the Plan if such
17 amendment or modification is approved by the Bankruptcy Court.

18 6. Withholding and Reporting Requirements

19 In connection with the Plan and all instruments issued in connection therewith and
20 distributions thereon, the Debtor will comply with all withholding and reporting requirements
21 imposed by any federal, state, local or foreign taxing authority, and all distributions pursuant to
22 the Plan will be subject to any such withholding and reporting requirements.

23 7. Tax Exemption

24 Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of
25 any security under the Plan, or the execution, delivery or recording of an instrument of transfer
26 pursuant to, in implementation of or as contemplated by the Plan, including, without limitation,
27 any transfers to or by the Liquidating Debtor of the Debtors' property in implementation of or as
28 contemplated by the Plan will not be taxed under any state or local law imposing a stamp tax,

1 transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar
2 official for any county, city or governmental unit in which any instrument hereunder is to be
3 recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such
4 instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp
5 tax, transfer tax, intangible tax or similar tax.

6 **IV. LIQUIDATION ANALYSIS**

7 Pursuant to Bankruptcy Code section 1129(a)(7), unless there is unanimous acceptance of
8 the Plan by an impaired Class, the Plan proponents must demonstrate that, and the Bankruptcy
9 Court must determine that, with respect to such Class, each holder of a Claim or Interest will
10 receive property of a value, as of the Effective Date of the Plan that is not less than the amount
11 that such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy
12 Code on the Effective Date of the Plan. This requirement is commonly referred to as the “best
13 interests test.” For the reasons set forth below, the Debtor submits that the proposed Plan
14 satisfies the “best interests test” and therefore should be approved.

15 In a Chapter 7 liquidation, holders of Allowed Claims would receive distributions based
16 on the liquidation or collection of the Debtors’ assets. Such assets would include the same assets
17 that are available to creditors under this Plan. However, if the Case were converted to a chapter
18 7 case at this point, the new chapter 7 trustee and his or her attorneys and accountants would
19 have to educate themselves regarding the remaining assets of the Estate. A new chapter 7 trustee
20 would not have the knowledge of the Case without spending time and resources, which would
21 ultimately add an additional layer of chapter 7 administrative expenses, which would effectively
22 reduce the ultimate distribution to Creditors.

23 The Plan on the other hand provides for the Debtor’s current officers and current
24 bankruptcy counsel who already have extensive knowledge of the of this Case to administer the
25 Debtor’s assets pursuant to the Plan. Moreover, the Plan contemplates that the Debtor will not
26 be required to seek approval from the Bankruptcy Court for the sale or disposition of any
27 potential remaining assets, whereas a Chapter 7 trustee would be required to continue to incur
28 these expenses. A comparison of the projected recoveries to Class 2 Claimants under the Plan

1 versus a scenario in which the case is converted to Chapter 7 is attached hereto as Exhibit C. As
2 set for on Exhibit C, which is based upon the Debtor's best estimates, Class 2 Claimants should
3 receive approximately \$64,000 more than if the case is converted to Chapter 7. Accordingly, the
4 Debtor believes that administration of the estate through closing can be done at less cost than if
5 the case were converted to Chapter 7, thereby provides a higher distribution to creditors.

6 7 **V. CONFIRMATION OF THE PLAN**

8 **A. BEST INTERESTS OF CREDITORS**

9 As addressed in the section IV above, the Debtor believes that confirmation of the Plan is
10 in the best interest of the holders of Claims because it provides to holders of Impaired Claims
11 distributions having a present value as of the Effective Date of not less than the value such
12 holders would likely receive if the Debtor were liquidated under chapter 7 of the Bankruptcy
13 Code.

14 In sum, the Plan proponents believe that the holders of Claims would realize less value if
15 the case were converted to a chapter 7 case at this point. Conversion would only create
16 unnecessary additional administrative expenses.

17 **B. FEASIBILITY**

18 In order to confirm a plan, the Bankruptcy Code requires the Bankruptcy Court to find
19 that confirmation of the Plan is not likely to be followed by liquidation or the need for further
20 financial reorganization of the debtor, unless that liquidation is contemplated by the plan
21 ("Feasibility Test"). Since a form of liquidation is proposed under the Plan and no further
22 reorganization of the Debtor is contemplated, the Plan proponents believe that the Plan meets the
23 Feasibility Test.

24 **C. ACCEPTANCE BY IMPAIRED CLASSES**

25 Section 1129(a) of the Bankruptcy Code requires that each class of claims or interests
26 that is impaired under a plan accept the plan subject to the "cramdown" exception contained in
27 section 1129(b) of the Bankruptcy Code. Under section 1129(b) of the Bankruptcy Code, if at
28 least one but not all impaired classes do not accept the Plan, the Court may nonetheless confirm

1 the Plan if the non-accepting classes are treated in the manner required by the Bankruptcy Code.
2 The process by which non-accepting classes are forced to be bound by the terms of the Plan is
3 commonly referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed
4 down” on non-accepting classes of claims or interests if (i) the Plan meets all confirmation
5 requirements except the requirement of section 1129(a)(8) of the Bankruptcy Code that the Plan
6 be accepted by each class of claims or interests that is impaired and (ii) the Plan does not
7 “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted
8 to accept the Plan, as referred to in section 1129(b) of the Bankruptcy Code and applicable case
9 law.

10 A class of claims under a plan accepts the plan if the plan is accepted by creditors that
11 hold at least two-thirds in amount and more than one-half in number of the allowed claims in the
12 class that actually vote on the plan. A class of interests accepts the plan if the plan is accepted by
13 holders of interests that hold at least two-thirds in amount of the allowed interests in the class
14 that actually vote on a plan.

15 A class that is not “impaired” under a plan is conclusively presumed to have accepted the
16 plan. Solicitation of acceptances from such a class is not required. A class is “impaired” unless
17 (i) the legal, equitable and contractual rights to which a claim or interest in the class entitles the
18 holder are not modified or (ii) the effect of any default is cured and the original terms of the
19 obligation are reinstated.

20 Under the Plan, Class 2 (General Unsecured Claims) and Class 3 (Late Filed Claim) are
21 impaired under the Plan and holders of Allowed Claims in such Class are entitled to vote to
22 accept or reject the Plan. Class 4 (Equity Interests) are deemed to reject the Plan.

23 The Plan provides fair and equitable treatment of impaired Claims, as either (a) each
24 impaired secured and unsecured creditor receives or retains under the plan property of a value
25 equal to the amount of its allowed Claim or (b) the holders of Claims and Interests that are junior
26 to such class of impaired claims will not receive or retain any property under the Plan. Pursuant
27 to the Plan, no holders of any Claim or Interest junior to the holders of such impaired Classes
28 will receive or retain any property on account of such junior Claims.

1 If any impaired Class fails to accept the Plan, the Debtor intends to request that the
2 Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code with
3 respect to those Classes.

4 **VI. CONCLUSION**

5 **THE DEBTOR URGES YOU TO VOTE TO ACCEPT THE PLAN AND TO**
6 **RETURN YOUR BALLOTS SO THAT THEY WILL BE RECEIVED AT THE**
7 **ADDRESS AND PURSUANT TO THE PROCEDURES DESCRIBED IN SECTION IN**
8 **THIS DISCLOSURE STATEMENT, NO LATER THAN 4:00 p.m. PACIFIC TIME ON**
9 **November 4, 2016.**

10
11 Dated: October 6, 2016

NUTI HART LLP

12
13 By: /s/ Gregory C. Nuti
14 Gregory C. Nuti
15 Attorneys for Debtor, Peek, Aren't You
16 Curious, Inc.

NUTI HART LLP
411 30TH STREET, SUITE 408
OAKLAND, CA 94609-3311
TELE: 510-506-7152