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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:

PACIFIC IMPERIAL RAILROAD, INC.,  
  
Debtor.

Case No. 16-06253-LT11

**[PROPOSED] DISCLOSURE  
STATEMENT TO DEBTOR'S PLAN  
OF REORGANIZATION DATED  
FEBRUARY 6, 2017**

Date: March 20, 2017  
Time: 2:00 p.m.  
Dept: 3  
Judge: Hon. Laura S. Taylor

Pacific Imperial Railroad, Inc., debtor-in-possession in the above-captioned case (the "Debtor"), is providing this Disclosure Statement to each known holder of a Claim or Interest in the Debtor for the purpose of soliciting acceptances of its Plan of Reorganization Dated February 6, 2017 (the "Plan")<sup>1</sup> and to enable Creditors to make an informed decision with regard to voting on the Plan. A copy of the Plan is attached hereto as Exhibit "A."

**I. INTRODUCTION**

The purpose of this Disclosure Statement is to provide holders of claims against or interest in the Debtor with adequate information to enable them to make informed judgments about the Plan before exercising their right to vote for acceptance or rejection of the Plan.

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<sup>11</sup> Many terms, capitalized and otherwise, used in this Disclosure Statement are defined in the Plan. You should consult the Plan for those definitions.

1 Acceptance or rejection of the Plan is important and must be made in writing. An  
2 acceptance or rejection of the Plan may only be made by completing the Ballot that  
3 accompanies the Plan and mailing it to:

4 Alan Vanderhoff, Esq.  
5 Vanderhoff Law Group  
6 600 West Broadway, Suite 1550  
7 San Diego, CA 92101

8 In order for a vote to be counted, the completed Ballot must be received no later than  
9 5:00 p.m. Pacific Time, \_\_\_\_\_, 2017. The Disclosure Statement describes the  
10 business background of the Debtor, the events that preceded the filing of this chapter 11  
11 case, and summarizes the terms of the Plan. If the Plan is confirmed by the Court, it will  
12 bind all creditors and interest holders regardless of whether an individual claimant voted for  
13 or against the Plan and regardless of whether that claimant filed a proof of claim or interest.

14 The Debtor strongly urges that each recipient carefully and completely review the  
15 contents of this Disclosure Statement and the Plan. Particular attention should be given to  
16 the provisions of the Plan affecting or impairing the rights of each holder of a Claim or  
17 Interest. The information contained in this Disclosure Statement has been submitted by the  
18 Debtor, unless specifically stated to be from other sources. The Debtor has authorized no  
19 representations concerning it or its financial affairs, other than those set forth herein.

20 The Plan is summarized below under the heading "Summary of the Plan," but all  
21 summaries are qualified by the terms of the Plan itself, which are in all instances  
22 controlling. You may not rely upon this Disclosure Statement for any purpose other than to  
23 determine how to vote on the Plan. Nothing contained in the Plan or Disclosure Statement  
24 shall constitute an admission of any fact or liability by any party, or be admissible in any  
25 proceeding involving the Debtor or any other party.

26 The statements contained in this Disclosure Statement are made as of the date hereof,  
27 unless another time is specified herein. Neither delivery of this Disclosure Statement nor  
28 any exchange of rights made in connection with the Disclosure Statement or the Plan shall  
under any circumstances create an implication that there has been no change in the facts set

1 forth herein after the date the Disclosure Statement was prepared. Although the Debtor  
2 believes that the contents of this Disclosure Statement are complete and accurate to the best  
3 of its knowledge, information and belief, the Debtor is unable to warrant or represent that  
4 the information contained herein is without any inaccuracy.

5 After notice and a hearing held on \_\_\_\_\_, and upon the request of the  
6 Debtor, the Court, pursuant to Section 1125 of the Bankruptcy Code, approved this  
7 Disclosure Statement as containing information of a kind, and in sufficient detail, as far as is  
8 reasonably practicable in light of the nature and history of Debtor and the condition of its  
9 books and records, that would enable a hypothetical reasonable investor, typical of the  
10 Debtor's creditors and shareholders, to make an informed judgment to vote to accept or  
11 reject the Plan. Approval of this Disclosure Statement by the Court does not, however,  
12 constitute a recommendation by the Court to accept or reject the Plan.

13 The Debtor believes that confirmation of the Plan is in the best interests of creditors.  
14 The Debtor recommends that investors and creditors vote to accept the Plan.

## 15 **II. BACKGROUND INFORMATION**

### 16 **A. Introduction.**

17 Pacific Imperial Railroad, Inc. ("PIR"), was created for the purpose of rehabilitating  
18 and operating the Desert Line rail line (the "Desert Line"). The Desert Line is the railroad  
19 right of way stretching approximately 70 miles from Mileposts 59.6 at or near the U.S.  
20 Border in Division, California to Milepost 130.0 at Plaster City, California. PIR leases the  
21 Desert Line pursuant to that certain Amended and Restated Desert Line Lease and  
22 Operating Agreement dated as of December 20, 2012, by and between Pacific Imperial  
23 Railroad, Inc., San Diego and Arizona Eastern Railway Company, a Nevada nonprofit  
24 corporation, and San Diego Metropolitan Transit Development Board also known as the San  
25 Diego Metropolitan Transit System (the "Desert Line Lease").

26 In May of 2016, PIR subleased a substantial portion of the Desert Line to Baja  
27 California Rail Road, Inc. ("Baja Rail") pursuant to that certain Cali-Baja Joint Venture  
28 Sublease and Operating Agreement dated as of May 31, 2016, by and among Pacific

1 Imperial Railroad, Inc. and Baja California Rail Road, Inc. (the “Desert Line Sublease”).  
2 Approximately 11 miles of the Desert Line were not subleased to Baja Rail. In addition, PIR  
3 owns real property adjacent to the Desert Line which may be suitable for the development  
4 of an intermodal facility. An intermodal facility is a facility that can transfer shipping  
5 containers from one mode of transportation to another – in this case, from trucks to trains.

6 The Debtor’s plan of reorganization is a liquidating plan. The Debtor will sell its  
7 remaining non-cash assets and will distribute the cash proceeds from the sale of those assets  
8 to its creditors in the priority set forth in the Bankruptcy Code. The Debtor’s assets will be  
9 sold pursuant to a motion brought under Bankruptcy Code section 363(f). The sale is not  
10 dependent upon the confirmation of the Plan and may occur either before or after  
11 confirmation of the Plan.

12 **B. Description the Desert Line, the Desert Line Lease, and the Desert Line**  
13 **Sublease.**

14 **1. The Desert Line.**

15 Over the span of approximately 70 miles, the Desert Line has 17 tunnels and 57  
16 bridges. Both bridges and tunnels are costly features to maintain even when in the best of  
17 conditions, let alone situations in which remediation work may be required. Additionally, a  
18 significant portion of the line serpentine through the Carrizo Gorge Canyon where the edge  
19 of the right of way meets with near-vertical drops off rocky precipices. This poses several  
20 challenges for rehabilitation and the maintenance of way given the extreme remoteness and  
21 inaccessibility. For the portion of rail line running through the canyon, there is little to no  
22 room for maintenance equipment to sit adjacent to the line to allow trains to pass. This  
23 means that in many cases the maintenance must be performed from the rail line itself. The  
24 line also features a prolonged ruling grade of 1.4% through the Carrizo Gorge, with the  
25 approaches to the Gorge reaching grades up to 2.2%. The railroad is curvy, with over sixty  
26 percent of the route miles featuring curvature, much of which exceeds ten degrees. These  
27 numerous curves not only increase wear on the track structure, requiring more frequent  
28 replacement of track components, but also severely constrict the length of railcars and trains

1 that can traverse the line. Simply put, the railroad is among the most rugged railroads, both  
2 operationally and regarding maintenance, in the country.

## 3 **2. The Desert Line Lease.**

4 The Desert Line Lease was entered into by and between the Debtor, on the one hand,  
5 and San Diego and Arizona Eastern Railway Company, a Nevada nonprofit corporation, and  
6 San Diego Metropolitan Transit Development Board also known as the San Diego  
7 Metropolitan Transit System, on the other. The Desert Line Lease is for a term of 50 years  
8 with an option to renew for an additional 49 years. It requires lease payments of \$1 million  
9 per year in semi-annual payments of \$500,000 each. It also requires payment of a  
10 percentage of gross freight revenue which in the amount of 7% beginning in the first year of  
11 limited operations.

12 The Desert Line Lease also contains repair and improvement “milestones.” Initial  
13 repairs were to be completed within 12 months of the approval of the Debtor’s Desert Line  
14 Rehabilitation Plan, followed by testing of the track with trains. Within 36 months of the  
15 effective date of the Desert Line Lease, the Debtor was to have begun limited operations.  
16 Full scale repairs were to be completed within 60 months of the lease effective date,  
17 followed by full scale operations. For various reasons discussed below, the Debtor was not  
18 able to raise sufficient funds to complete the milestones on time. As a result, the Debtor is at  
19 risk of being in default under the Desert Line Lease for failing to timely perform the  
20 performance milestones set forth in the lease.

## 21 **3. Challenges with the Desert Line Lease.**

22 Although the Desert Line Lease is PIR’s most valued asset, it is also the source of  
23 several challenges. First amongst these challenges is the biannual minimum lease payment  
24 of \$500,000. Given that PIR has no operating income, these payments have resulted in PIR  
25 assuming additional debt every six-month interval when the payments are due. From a  
26 fundraising standpoint, the high lease payments every six months have put undue pressure  
27 on PIR’s management to shift fundraising focus to the payment of the lease rather than  
28 rehabilitation efforts. Originally, PIR had anticipated being fully vested and operational by

1 the close of 2015, however due to issues arising from past management teams, PIR  
2 experienced substantial timeframe and material setback.

3 The second challenge with the lease is the obligation of 7% of annual gross freight  
4 revenues that ultimately must be paid to MTS once the Desert Line is fully operational and  
5 earning revenues. This has been a major roadblock for PIR with respect to securing  
6 substantial long-term financing given that short lines, on average, have operating ratios at or  
7 around 80%. If the Desert Line could be considered an “average” short line, this would  
8 leave PIR with an approximate 13% operating profit margin available to pay taxes and  
9 reinvest, and/or for distributing dividends to stockholders. This is not an attractive  
10 opportunity from an investor’s standpoint especially considering the Desert Line is likely to  
11 have higher operating and maintenance costs due to the rugged nature of the line. It is  
12 reasonable to assume that the Desert Line’s operating ratio will exceed 80%. David L.  
13 Parkinson, an unaffiliated and uninterested third party and Principal of Park Rail Co., a short  
14 line operator who is familiar with the line, asserted that over his career he has operated short  
15 line railroads with a 65% operating ratio; however, it was his opinion that because of the  
16 Desert Line’s 17 tunnels and 57 bridges, PIR would have much higher than average  
17 maintenance of way costs. It was also Mr. Parkinson’s opinion that if the Desert Line were  
18 operated efficiently, it could have an operating ratio of approximately 80-84%. The reality  
19 facing PIR is that the annual obligations of 7% of gross freight revenues could cause PIR to  
20 incur a deficit if it isn’t operating below a 93% operating ratio.

21 Another key challenge with the lease has been that of the reconstruction and  
22 operating performance milestones. In July of 2015, it was clear that PIR had no chance of  
23 meeting initial milestones originally set forth in December of 2012. It had become difficult  
24 to attract sufficient investment to complete costly rehab work. As such, PIR revised its  
25 operational and reconstruction phasing strategy so that it included the build out of an  
26 intermodal facility at Coyote Wells that could accommodate trucking from Tijuana’s  
27 maquiladoras, effectively bypassing the Baja Rail portion of rail. The rationale for such a  
28 revision was that it would allow PIR to cut down on capital expenditures, given it primarily

1 entailed rehab of approximately ten miles of track, or about 14% of Desert Line, and  
2 avoided much of the costly repairs associated with track structures in the Carrizo Gorge  
3 Canyon. It would also enable PIR to earn revenue quickly and independently of an  
4 agreement with Baja Rail, allowing PIR to finance continued reconstruction on the balance  
5 of the Desert Line by reinvesting earnings rather than going further into debt.

6 MTS was accommodating of these issues and on July 16, 2015, agreed to approve  
7 modification of the milestones in the Desert Line Lease to provide PIR with additional time  
8 to complete the revised construction in order to become operational in accordance with the  
9 new strategy. However, PIR was unable to meet the revised milestone reconstruction  
10 deadlines due to the inability to obtaining financing in a timely manner. Although the  
11 current Management of PIR enjoys a positive and fairly amicable relationship with MTS  
12 representatives, it is important to note that MTS has the sole discretion to declare the lease  
13 in default for PIR's failure to meet the milestones. Although there is a provision in the lease  
14 that lends substantial discretion to MTS to adjust milestones on a reasonable basis, not  
15 maintaining compliance with the Desert Line Lease exposes PIR to substantial undue risk.

#### 16 **4. The Desert Line Sublease.**

17 In June of 2016, the Debtor entered into the Desert Line Sublease with Baja Rail. The  
18 Desert Line Sublease is a ninety-six year sublease of the Desert Line, granting Baja Rail  
19 exclusive operating rights between milepost 59.6 and milepost 119 ("Baja Rail Segment"),  
20 and nonexclusive operating rights between milepost 119 and milepost 129.61 ("Intermodal  
21 Segment"), in effect creating a binational rail corridor allowing Baja Rail the ability to  
22 traverse and operate over the entirety of the Desert Line, while reserving to PIR, or its  
23 assignee, the non-exclusive right to operate over the Intermodal Segment and the exclusive  
24 right to develop, construct, and operate an intermodal facility along the Intermodal Segment.

25 Baja Rail paid PIR \$3,000,000 as initial consideration for the operating rights over  
26 the Desert Line, and Baja Rail will be responsible for paying PIR semiannual lease  
27 payments of \$425,000. Additionally, Baja Rail will be responsible for financing the  
28



1 reconstruction of the Baja Rail Segment and maintaining compliance with reconstruction  
2 milestones in the Desert Line Lease as they apply to the Baja Rail Segment.

3 **C. The Reasons for Bankruptcy.**

4 PIR had exhausted its efforts to raise investor capital to develop its remaining assets.  
5 Restoring the last 10 miles of the Desert Line would cost approximately \$10 million.  
6 Developing an intermodal facility would cost tens of millions of dollars more. During its  
7 entire history, PIR was unable to attract capital investment at a scale that would permit PIR  
8 to develop its assets. The reasons included such things as a perception by prospective  
9 investors that the revenue based portion of the rent under the Desert Line Lease was too  
10 high and that the Desert Line had been and continues to be the subject of intense litigation  
11 by multiple parties.

12 PIR was facing improvement milestones required under the Desert Line Lease which  
13 it knew it would not be able to meet. Moreover, PIR was being sued by multiple parties in  
14 multiple lawsuits. In one lawsuit, an investor in a company that was a prior operator of the  
15 Desert Line who had sued PIR, sought to amend its cross complaint to name individual  
16 employees of the MTS and Baja Rail.

17 Given that PIR would not be able to complete the milestones required under the  
18 Desert Line Lease, it made sense to sell the remaining assets to maximize the value of the  
19 remaining assets, rather than to simply default under the Desert Line Lease and lose the  
20 lease through termination by the MTS. Baja Rail was a likely candidate as a buyer of the  
21 remaining assets. However, it was under threat of being sued by prior operators of the line.

22 It was decided that a chapter 11 bankruptcy would be the best course of action for  
23 PIR. A chapter 11 bankruptcy case would stay the pending litigation against PIR, would  
24 enable PIR to sell its remaining assets to a buyer who could receive clean title to the assets  
25 free of the threat of future litigation, and it would provide a forum where creditors and  
26 shareholders could voice their view, concerns, and objections to any course of action  
27 proposed by PIR. After a full and fair opportunity for all parties to be heard, the bankruptcy  
28



1 judge would ultimately decide what course of action was in the best interests of the  
2 bankruptcy estate and its creditors.

### 3 **III. SUMMARY OF THE PLAN**

#### 4 **A. Introduction.**

5 This Disclosure Statement contains a brief summary of the Plan and is qualified in its  
6 entirety by the full text of the Plan itself, a copy of which is attached hereto as **Exhibit "A."**  
7 All terms defined in the Plan have the same meaning in this Disclosure Statement unless  
8 otherwise stated. The Plan, if confirmed, will be binding upon the Debtor, the creditors and  
9 interest holders. All creditors and interest holders are urged to carefully read the Plan.

#### 10 **B. Classification and Treatment of Claims.**

11 The Plan provides for the payment of Administrative Expenses and Claims of  
12 creditors. Administrative Expenses and priority tax Claims are not classified. The Plan  
13 divides all other prepetition Claims and equity interests into six (6) classes. The Claims of  
14 creditors and interests of equity holders are classified and treated as follows:

15 **1. Class 1.** Class 1 consists of the Allowed Secured Claim, if any, of Charles  
16 Fletcher. Class 1 is impaired. The holder of the Class 1 claim, Charles Fletcher, asserts a  
17 security interest in all of the Debtor's assets including, without limitation, the Desert Line  
18 Lease. The Debtor believes that the security interest of Charles Fletcher in the Desert Line  
19 Lease is unperfected and is subject to avoidance under applicable bankruptcy law. The  
20 holder of the Class 1 claim shall receive payment on the Distribution Date equal to the value  
21 of the property of the Debtor in which the holder of the Class 1 claim has a valid, duly-  
22 perfected, security interest as determined by the Bankruptcy Court or as set forth in a  
23 compromise between the Debtor and Mr. Fletcher which is approved by the Bankruptcy  
24 Court. To the extent that all or a portion of the security interest asserted by the holder of the  
25 Class 1 claim is avoided or compromised, the Class 1 claim shall receive the same treatment  
26 as the claims in Class 5.

1                   **2. Class 2.** Class 2 consists of the Allowed Secured Claim of the Imperial  
2 County Tax Collector. Class 2 is unimpaired. The holder of the Class 2 claims shall be paid  
3 the later of the Distribution Date or the date upon which the Class 2 claims becomes due.

4                   **3. Class 3.** Class 3 consists of the Allowed Secured Claim of the San Diego  
5 Tax Collector. Class 3 is unimpaired. The holder of the Class 3 claims shall be paid the later  
6 of the Distribution Date or the date upon which the Class 3 claims becomes due.

7                   **4. Class 4.** Class 4 consists of Allowed Secured Claim, if any, of Locati  
8 Global Holdings, Inc. Class 4 is impaired. The Class 4 claim is disputed. The Debtor  
9 believes that the security interest asserted by Locati Global Holdings, Inc. is invalid or  
10 avoidable and that the claim asserted by Locati Global Holdings, Inc. is invalid. To the  
11 extent that the Class 4 claim is determined by the Court to be an allowed, secured claim, the  
12 holder of the Class 4 claim shall receive on the Distribution Date payment in an amount  
13 equal to the value of the Class 4 claimant's interest in property owned by the Debtor. To the  
14 extent that the Class 4 claim is determined by the Court to be an allowed claim and all or  
15 part of that claim is determined to be an unsecured claim, the Class 4 claimant's unsecured  
16 claim shall receive the same treatment as the claims in Class 5.

17                   **5. Class 5.** Class 5 consists of Allowed unsecured Claims. Class 5 is  
18 impaired. The holders of general unsecured claims shall receive on the Distribution Date a  
19 pro rata share of the Cash Assets of the Debtor remaining after the payment of Classes 1, 2,  
20 3 and 4.

21                   **6. Class 6.** Class 6 consists of the holders of equity interests in the Debtor.  
22 Class 6 is unimpaired. The equity holders shall receive on the Distribution Date a pro rata  
23 share of the Cash Assets of the Debtor remaining after the payment of Classes 1, 2, 3, 4 and  
24 5.

25                   **C. Payment of Administrative Expenses.**

26                   Administrative Claims are not classified under the Plan. Each holder of an Allowed  
27 Administrative Claim that has not been satisfied during the Case shall be paid in full on the  
28 Effective Date. The administrative claims are expected to be comprised of the legal fees and

1 costs of the Debtor's counsel. The Debtor estimates that the administrative expenses on the  
2 Effective Date will be approximately \$\_\_\_\_\_.

3 **D. Executory Contracts.**

4 At the time of a closing of a sale of the Assets pursuant to the Plan or pursuant to a  
5 motion to sell the Assets under Bankruptcy Code section 363, the Debtor shall assume the  
6 Desert Line Lease, the Desert Line Sublease, and all other leases and executory contracts  
7 designated by the Buyer and assign those leases and executory contracts to the Buyer. All  
8 other executory contracts and unexpired leases shall be rejected as of the Effective Date of  
9 the Plan.

10 Any individual or entity holding a Claim based upon the rejection of an executory  
11 contract or unexpired lease pursuant to this Article must, within thirty days after  
12 Confirmation, file a proof of claim with the Bankruptcy Court. Any such Claims shall be  
13 treated as Class 5 unsecured Claims unless the Bankruptcy Court orders otherwise. The  
14 failure of any such individual or entity to file a proof of claim within the specified time  
15 period will result in the disallowance of such Claim.

16 **E. Means for Implementing the Plan.**

17 **1. Sale of Assets.** The Debtor shall sell all of its real and non-cash personal  
18 property of every kind and description including, without limitation, all of Debtor's real  
19 property, equipment, inventories, technology, patents, patent applications, copyrights,  
20 trademarks, trade names, trade secrets, know-how, and other intellectual property rights, and  
21 Debtor's rights under all contracts (collectively, the "Assets"). The sale will include the  
22 assumption by Debtor of such executory contracts and unexpired leases as the buyer selects  
23 and the concomitant assignment of those contracts and leases to the buyer. The Assets shall  
24 not include any cash or cash equivalents, deposit accounts, accounts receivable, bankruptcy  
25 avoidance claims, or any other assets that are specifically excluded by the asset purchase  
26 agreement entered into between the Debtor and the ultimate buyer (the "Buyer").

27 **2. Procedure and Timing of Sale.** The sale of the Debtor's assets shall be  
28 free and clear of all liens and interests pursuant to Bankruptcy Code section 363(f). The sale

1 will be pursuant to a motion to sell the Assets free and clear of liens. The sale may be  
2 approved prior to confirmation of this Plan, or may be accomplished after confirmation of  
3 this Plan. If the sale is conducted after confirmation of this Plan, it shall comply with all of  
4 the requirements of Bankruptcy Code section 363.

5 **3. Revesting of Property.** Except as otherwise provided in the Plan, all  
6 property of the Debtor which has not been previously sold shall be revested in the  
7 Reorganized Debtor on the Effective Date of the Plan.

8 **4. Reorganized Debtor Power and Authority.** Subject to the provisions of  
9 the Plan, the Reorganized Debtor may administer, manage, operate, or liquidate all property,  
10 contractual interests, setoffs, and recoupments of the estate and may prosecute or settle any  
11 and all causes of action of any type not otherwise disposed of by the Plan.

12 Without limiting any other power or authority granted to the Reorganized  
13 Debtor hereunder, the Reorganized Debtor shall have the power and authority to (1)  
14 prosecute, settle, compromise, and/or dismiss any of the causes of action owned by the  
15 bankruptcy estate, (2) manage and protect the estate and distribute the net proceeds as  
16 specified herein, (3) grant options to purchase, enter into contracts to sell, and sell the assets  
17 of the estate or any part or parts thereof on such terms as it shall deem appropriate in its  
18 independent business judgment, (4) release convey, assign, or sell any right, title, or interest  
19 in or about the estate, (5) pay and discharge any costs, expenses, fees, or obligations deemed  
20 necessary to preserve the estate, (6) purchase insurance to protect the estate, the  
21 Reorganized Debtor, and their agents and professionals from liability, (7) deposit funds and  
22 draw checks and make disbursements thereof, (8) employ and compensate brokers to help  
23 sell property of the estate, (9) file and prepare tax returns on behalf of the estate, (10) take  
24 any action required or permitted by this Plan, (11) employ attorneys, accountants, brokers,  
25 and other professionals, as it deems necessary to assist it in performing its duties as  
26 Reorganized Debtor, and compensate such persons pursuant to the Plan, (12) settle,  
27 compromise, or adjust by arbitration or otherwise, any disputes or controversies in favor of  
28 or against the estate subject to approval of the Bankruptcy Court, (13) abandon property of

1 the estate pursuant to section 554 of the Bankruptcy Code, (14) waive or release rights of  
2 any kind, and (15) cause the Debtor to be dissolved.

3           **5. Disbursements.** The Reorganized Debtor may make any number of  
4 interim distributions as it deems appropriate. Distributions shall be made to the addresses  
5 contained in the proofs of claim filed by such holders or the last known address of such  
6 holders. Checks issued by the Reorganized Debtor shall be null and void if not cashed  
7 within ninety days of the date of issuance thereof. If any distribution is returned as  
8 undelivered, no further distributions to such holder shall be made unless and until the  
9 Reorganized Debtor is notified of such holder's then current address, at which time all  
10 missed distributions shall be made to such holder without interest. Amounts with respect to  
11 undeliverable distributions made by the Reorganized Debtor shall be returned to the  
12 Reorganized Debtor until such distributions are claimed. All Claims for undeliverable  
13 distributions shall be made on or before the second anniversary of the Effective Date. After  
14 such date, all unclaimed property shall be deemed property of the Reorganized Debtor and  
15 no longer subject to the terms of the Plan, and all Claims against the Reorganized Debtor  
16 shall be forever barred.

17           **6. Reserve.** Prior to making distributions to particular classes, the  
18 Reorganized Debtor shall reserve sufficient cash for the payment of (1) all estimated post-  
19 confirmation expenses of the Reorganized Debtor and its agents, (2) all Claims in senior  
20 classes, and (3) Contested Claims in senior classes and Contested Claims in the class  
21 receiving the distribution. No reserve shall be established for any contingent Claim in the  
22 absence of a Final Order requiring such reserve. If a contingent Claim becomes fixed and  
23 absolute, the holder of such contingent Claim shall receive distributions pursuant to section  
24 502(j) of the Bankruptcy Code, to the extent the Claim may otherwise be Allowed. In the  
25 event a contingent Claim is entitled to distributions pursuant to section 502(j) of the  
26 Bankruptcy Code, such Claim shall receive pro rata distribution in the proportion it bears to  
27 all other Allowed Claims of the same Class.  
28

**7. Post-confirmation Compensation of Reorganized Debtor's**

**Professionals.** The Reorganized Debtor's professionals shall be entitled to compensation and reimbursement of expenses. The Reorganized Debtor's professionals may invoice the Reorganized Debtor directly on a monthly basis and also serve a copy of the invoice on the Office of the United States Trustee. In the event no objection to payment of an invoice is filed and served on the Reorganized Debtor and the billing professional by the Office of the United States Trustee within fifteen (15) days of service of the invoice and the Reorganized Debtor does not otherwise object to payment of the invoice, the Reorganized Debtor may pay such invoice without further order of the Court from non-estate property or from Net Sale Proceeds provided that all secured claims have been paid in full; provided further however, that in the event an objection is timely filed and served on the Reorganized Debtor and the billing professional or in the event of a dispute between the Reorganized Debtor and the professional, the professional may submit an application for payment to the Court, and the Court retains jurisdiction to hear such applications and enter appropriate orders thereon.

**F. Objections to Claims.**

Objections to Claims, whether filed by the Debtor, the Reorganized Debtor or creditors, must be filed not later than 90 days following the Effective Date of the Plan. This section shall not limit parties' rights to object to Claims, if any, filed or amended after the Effective Date, or to seek an extension of the time to object to Claims for cause shown. appropriate orders thereon.

**G. Approval of Settlements.**

Court approval for compromises entered into by the Reorganized Debtor shall be obtained pursuant to the Notice of Intended Action procedure set forth in Bankruptcy Local Rule 2002-2.

**IV. LIQUIDATION ANALYSIS**

When evaluating the terms of the Plan, each creditor should weigh various alternatives for payment. One alternative to the Plan is the liquidation of all of the estate's assets, through a proceeding under chapter 7 the Bankruptcy Code. If the Debtor's case was

1 converted to a case under chapter 7 of the Bankruptcy Code, a chapter 7 trustee would be  
2 appointed and would liquidate all of the Debtor's assets and distribute the proceeds to the  
3 creditors.

4 In the present case, the Plan is a liquidating plan of reorganization. The assets will be  
5 sold as they would be in a chapter 7 case. The timing of the assumption and assignment of  
6 the Desert Line Lease is critical in this case. The Desert Line Lease is in default due to the  
7 inability of the Debtor to timely complete certain milestone improvements. The MTS has  
8 expressed concern regarding the defaults and has indicated that it reserves the right to  
9 declare a default under the Desert Line Lease if a sale to a viable party is not completed  
10 quickly. If the case were to be converted to a chapter 7, it is not certain that a Chapter 7  
11 trustee could assume and assign the Desert Line Lease within timeframes acceptable to the  
12 MTS. It is possible that the primary asset of the Debtor could be lost if the Debtor's case  
13 was converted to a chapter 7. Creditors under the Plan will receive at least as much as they  
14 would have received if the Debtor's case was a chapter 7 case. .

## 15 **V. ADDITIONAL SOURCES OF INFORMATION**

16 Additional sources of information available to all creditors include the various  
17 schedules and reports which were filed by the Debtor in accordance with the provisions of  
18 Bankruptcy Code. These include, without limitation, the "Chapter 11 Statement of  
19 Financial Affairs for Debtor Engaged in Business," Schedules and monthly operating  
20 reports for all periods from October 2016 to the present. The schedules and operating  
21 reports described above are available for inspection and review by the public in the office of  
22 the Clerk of the United States Bankruptcy Court located at 325 West F Street, San Diego,  
23 California during regular business hours (Monday - Friday, 9:00 a.m. to 4:00 p.m.).

## 24 **VI. VOTING INSTRUCTIONS AND CONFIRMATION PROCEDURES**

### 25 **A. Voting Procedure.**

26 Bankruptcy is a type of creditor democracy. The Plan divides the Claims of  
27 Creditors and Equity Interest holders into six (6) separate classes. Only impaired classes of  
28 creditors are entitled to vote on the Plan. As a general rule "impaired classes" include



creditors who, under the Plan, will not receive payment in full of their Claims on the Effective Date of the Plan. In this case, all Classes are impaired.

All creditors entitled to vote on the Plan must cast their vote by completing, dating and signing the "Ballot," which is enclosed with this Disclosure Statement. When fully executed, the Ballot must be mailed to Alan Vanderhoff, Esq., 600 West Broadway, San Diego, California 92101 such that it is received not later than 5:00 p.m. (PDT) on \_\_\_\_\_. A vote rejecting the Plan may be changed to a vote accepting the Plan anytime prior to the conclusion of the confirmation hearing by providing notice of the change to counsel for the Debtor.

#### **B. Confirmation of Plan/Solicitation of Acceptances.**

This Disclosure Statement has been approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code and is provided to each person whose Claim or Equity Interest has been scheduled by the Debtor or who has filed a proof of Claim or Equity Interest with respect to the Debtor or its property, and to the Debtor. The Disclosure Statement is intended to assist creditors in evaluating the Plan and determining whether to accept the Plan.

In determining acceptance of the Plan, votes of creditors will only be counted if submitted by a creditor whose Claim is duly scheduled by the Debtor as undisputed, non-contingent and liquidated, or who has filed with the Court a proof of Claim or proof of interest to which no objection has been filed.

#### **C. Hearing on Confirmation of Plan.**

The Court has set \_\_\_\_\_, 2017, at \_\_\_\_\_, in Department Three (3) of the Bankruptcy Court as the time, date and place for the hearing to determine whether the Plan has been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied. Each creditor will receive, with this Disclosure Statement, a Notice of Hearing on Confirmation of the Plan which gives the details of that hearing and a date by which objections to the confirmation of the Plan, if any, must be filed. That hearing may be continued from time to time by announcements made by

1 the Bankruptcy Court in open session at the hearing without any further written notice being  
2 provided to you. Your attendance at the hearing on Confirmation of the Plan is encouraged.

3 **D. Acceptances Necessary to Confirm Plan.**

4 At the scheduled hearing, the Court must determine, among other things, whether the  
5 Plan has been accepted by each impaired class. Under Section 1126 of the Code, an  
6 impaired Class of Claims is deemed to have accepted the Plan upon a favorable vote of at  
7 least two-thirds in (dollar) amount and more than one-half in number of the Allowed Claims  
8 of Class members voting on the Plan. Further, unless there is unanimous acceptance of the  
9 Plan by an impaired class, the Court must also determine that Class members will receive at  
10 least as much as they would if the Debtor was liquidated under chapter 7 of the Code. The  
11 Debtor believes that the Plan satisfies this requirement as to each Class.

12 **E. Confirmation of the Plan Without Necessary Acceptances.**

13 The Plan may be confirmed even if it is not accepted by one or more of the impaired  
14 classes, if the Court finds that the Plan does not discriminate unfairly against and is "fair and  
15 equitable" as to each dissenting class. This provision is generally set forth in Section  
16 1129(b) of the Bankruptcy Code. Generally, that section requires a showing that the Claims  
17 in such Class either will receive the full value of the Claim or, if they receive less, no Class  
18 with junior liquidation priority may receive anything. With respect to a class of unsecured  
19 Claims, the term "fair and equitable" in section 1129(b) means that the Plan provides that  
20 each holder of a Claim of such class receive or retain on account of such Claim property of a  
21 value, as of the effective date of the Plan, equal to the allowed amount of such Claim, or that  
22 the holder of any Claim or interest that is junior to the Claims of such class will not receive  
23 or retain any property under the Plan on account of such junior Claim or interest. Section  
24 1129(b) is a relatively flexible, yet very complex provision, and this summary is not  
25 intended to be a complete statement of the law. You should consult your own legal counsel  
26 for a full understanding of your rights and the Debtor's powers under that section.

1 Please take notice that if one or more classes of impaired Claims fail to accept the  
2 Plan the Debtor presently intends to request confirmation of the Plan notwithstanding the  
3 non-acceptance of that class pursuant to the provisions of Bankruptcy Code section 1129(b).

4 **F. Plan Amendments at Confirmation Hearing.**

5 The provisions of the Bankruptcy Code give the Debtor substantial power to amend  
6 and alter provisions of the Plan up to and including the time of the Confirmation Hearing.  
7 The provisions of the Plan regarding technical and curative amendments are particularly  
8 significant because they permit the Debtor to propose and implement any number or type of  
9 amendments to the Plan for the purpose of neutralizing or curing an actual or claimed defect  
10 in the Plan asserted by the Bankruptcy Court or any party-in-interest. This right extends  
11 additionally to any amendments which are made to respond to or neutralize any objections  
12 to the Plan previously advanced by any party-in-interest.

13 By its terms, the Plan does not require any prior written notice of such technical  
14 and/or curative amendment to be given to any creditor or party-in-interest. The only  
15 requirement for notice of such modification is that the modification be disclosed in open  
16 session of the confirmation hearing. Unless you attend all sessions of the confirmation  
17 hearing, you may not have the opportunity to object to such changes.

18 In addition to the foregoing, the provisions of the Bankruptcy Code vest the  
19 Bankruptcy Court with substantial power and discretion to effectively modify (in ways  
20 which may be favorable or unfavorable) the rights and benefits which various parties may  
21 receive under the Plan by superimposing various conditions or other requirements as part of  
22 its Order of Confirmation. No prior notice of any provisions that the Court may insert in its  
23 Order of Confirmation will be given to any party-in-interest except to the extent that such  
24 intentions are disclosed in open session of the Bankruptcy Court. Here again, your failure to  
25 attend any session of the Confirmation Hearing might mean you will not have the  
26 opportunity to object to or otherwise be heard as to potential amendatory provisions to the  
27 Plan (if any) which the Court decides to insert in its Order of Confirmation.

1 All parties-in-interest are encouraged to personally attend every session of the  
2 confirmation hearing. Only by such attendance can parties be assured of obtaining notice  
3 and an opportunity to be heard on all amendatory provisions which may affect their rights  
4 under the Plan.

5 **VII. TAX CONSEQUENCES**

6 The Debtor is not offering tax advice to any creditor and this Disclosure Statement  
7 should not be considered to contain any specific advice or instruction considering the tax  
8 treatment of any Claim or interest. Each creditor is urged to consult with its own legal,  
9 accounting or other advisor concerning the tax treatment of its Claim or any distribution  
10 from or on behalf of the Debtor pursuant to the Plan or otherwise.

11 **VIII. SOLICITATION OF ACCEPTANCES OF THE PLAN**

12 The Debtor believes that the Plan will provide the best distribution that is possible in  
13 this case. The Debtor urges you to vote to accept the Plan. To accept or reject the Plan, the  
14 enclosed Ballot must be returned to the place and by the time specified on the Ballot.

15 February 6, 2017

VANDERHOFF LAW GROUP

16 /s/ Alan Vanderhoff  
17 By: \_\_\_\_\_

18 Alan Vanderhoff  
19 Attorneys for Pacific Imperial Railroad, Inc.

## EXHIBIT “A”

VANDERHOFF LAW GROUP  
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San Diego, California 92101  
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Attorneys for Pacific Imperial Railroad, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:	Case No. 16-06253-LT11
PACIFIC IMPERIAL RAILROAD, INC.,	PLAN OF REORGANIZATION DATED FEBRUARY 6, 2017
Debtor.	Date: No hearing set Time: Dept: 3 Judge: Hon. Laura S. Taylor

Pacific Imperial Railroad, Inc., the debtor and debtor-in-possession in the above-captioned case (the "Debtor"), hereby proposes this plan of reorganization (the "Plan").

ARTICLE 1

Definitions

1.01 "Administrative Claim" means any cost or expense of administration of the Debtor's Chapter 11 bankruptcy case entitled to priority in accordance with the provisions of sections 503(b) and 507(a)(1) of the Bankruptcy Code.

1.02 "Administrative Claim Request" means a request for payment of an Administrative Claim that is to be filed with the Bankruptcy Court and served on the Debtor and counsel for the Debtor by not later than the Administrative Claim Request Deadline.

1           1.03   “Administrative Claim Request Deadline” means the date set as the  
2   deadline for filing Administrative Claim Requests, which shall be thirty (30) days  
3   after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

4           1.04   “Allowed” when used in reference to a Claim means (i) a Claim against  
5   the Debtor, proof of which was timely filed, as to which no objection has been  
6   interposed; or (ii) if no proof of Claim has been filed, but the Claim has been  
7   scheduled by the Debtor as liquidated in amount and not disputed or contingent, as to  
8   which no objection has been interposed; or (iii) a Claim as to which any objection has  
9   been interposed, to the extent such Claim has been Allowed in whole or in part by a  
10   Final Order.

11          1.05   “Bankruptcy Code” means title 11 of the United States Code.

12          1.06   “Bankruptcy Court” means the United States Bankruptcy Court for the  
13   Southern District of California or, in the event of a withdrawal of the reference, the  
14   United States District Court for the Southern District of California.

15          1.07   “Causes of Action” means any and all actions, proceedings, causes of  
16   action (including, without limitation, any causes of action of a debtor or debtor in  
17   possession or trustee under chapter 5 of the Bankruptcy Code, including pursuant to  
18   Sections 506, 510, 544, 545, 547, 548, 549, 550 or 553 thereof), suits, accounts, debts,  
19   sums of money, accounts, reckonings, covenants, contracts, controversies,  
20   agreements, promises, rights to legal remedies, rights to equitable remedies, rights to  
21   payment and claims, variances, trespasses, damages, judgments, executions, claims  
22   and demands whatsoever, whether known, unknown, reduced to judgment, not  
23   reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
24   disputed, undisputed, secured or unsecured or whether asserted or assertable directly  
25   or derivatively, in law, equity or otherwise, and all rights thereunder or attendant  
26   thereto.



1           1.08   “Claim” means any right to payment from the Debtor, whether or not  
2 such right is reduced to judgment, liquidated, unliquidated, fixed, contingent,  
3 matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or  
4 any right to an equitable remedy for breach of performance if such breach gives rise  
5 to a right of payment from either of the Debtor, whether or not such right to an  
6 equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,  
7 disputed, undisputed, secured, or unsecured.

8           1.09   “Confirmation Order” means a Final Order of the Bankruptcy Court  
9 confirming the Plan.

10          1.10   “Contested Claim” means any Claim that is not an Allowed Claim.

11          1.11   “Debtor” means Pacific Imperial Railroad, Inc.

12          1.12   “Desert Line” means the Desert Line railroad right of way stretching  
13 approximately 70 miles from Mileposts 59.6 at or near the U.S. Border in Division,  
14 California to Milepost 130.0 at Plaster City, California;

15          1.13   “Desert Line Lease” means that certain Amended and Restated Desert  
16 Line Lease and Operating Agreement dated as of December 20, 2012, by and between  
17 Pacific Imperial Railroad, Inc., San Diego and Arizona Eastern Railway Company, a  
18 Nevada nonprofit corporation, and San Diego Metropolitan Transit Development  
19 Board also known as the San Diego Metropolitan Transit System, a California public  
20 agency, and all amendments thereto.

21          1.14   “Desert Line Sublease” means that certain Cali-Baja Joint Venture  
22 Sublease and Operating Agreement dated as of May 31, 2016, by and among Pacific  
23 Imperial Railroad, Inc. and Baja California Rail Road, Inc., and all amendments  
24 thereto.

25          1.15   “Disputed Claim” means a claim to which an objection has been filed  
26 and which has not been determined by a final, non-appealable order of the Bankruptcy  
27 Court.

1           1.16    “Distribution Date” when used with respect to each Allowed Claim,  
2 means the later of (i) the Effective Date, and (ii) the date upon which the Claim  
3 becomes an Allowed Claim, and when used with respect to an Administrative Claim,  
4 means the later of (i) the Effective Date, and (ii) ten days following the entry of a  
5 Final Order allowing the Administrative Claim.

6           1.17    “Effective Date” means the first business day that is more than 15 days  
7 after the Confirmation Order becomes a Final Order.

8           1.18    “Estate” means the bankruptcy estate of the Debtor.

9           1.19    “Final Order” means an order or judgment of a court of competent  
10 jurisdiction, including the Bankruptcy Court, which is no longer subject to appeal or  
11 certiorari proceeding and as to which no appeal or certiorari proceeding is pending. .

12          1.20    “Petition Date” means October 13, 2016.

13          1.21    “Reorganized Debtor” means the Debtor after the Effective Date.

14          1.22    Other Terms. The words “herein,” “hereof,” “hereto,” “hereunder” and  
15 others of similar import refer to the Plan as a whole and not to any particular article,  
16 section or clause contained in the Plan. The term “day” means calendar day, except  
17 when used in the defined term “Business Day.” The terms “include,” “including” and  
18 forms thereof means inclusive without limitation. Whenever from the context it  
19 appears appropriate, each term stated in either the singular or the plural includes the  
20 singular and the plural, and pronouns stated in the masculine, feminine or neuter  
21 general include the masculine, feminine and the neuter. Section headings and captions  
22 contained in the Plan are for reference purposes only and shall not affect in any way  
23 the meaning or interpretation of the Plan. A reference to an “Article” or “Section”  
24 refers to an Article or Section of the Plan. A term used herein that is not defined  
25 herein shall have the meaning ascribed to that term, if any, in or by the Bankruptcy  
26 Code. The rules of construction set forth in section 102 of the Bankruptcy Code shall  
27 apply in constructing the Plan.

ARTICLE 2

Payment of Administrative Claims and Priority Tax Claims

2.01 Administrative Claims. Unless the holder of an Administrative Claims agrees to a different treatment, Administrative Claims Allowed pursuant to Bankruptcy Code sections 503(b)(1) and 507(a)(2) (and not previously paid), shall be paid in full on the Effective Date. All unpaid fees to the United States Trustee shall be paid in full on the Effective Date.

2.02 Administrative Claim Request Deadline. In order to be paid an Administrative Claim, all administrative claimants, other than professionals employed pursuant to Bankruptcy Code section 327, must file Administrative Claim Requests and serve those requests on counsel for the Debtor not later than the Administrative Claim Request Deadline. All Administrative Claims for which an Administrative Claim Request is not filed and served prior to the Administrative Claim Request Deadline shall be forever barred.

2.03 Priority Tax Claims. Taxes entitled to priority under Section 507(a)(8) of the Bankruptcy Code shall be paid in full on the Effective Date. The Debtor does not believe that there are any priority tax claims in this case.

ARTICLE 3

Classification of Claims and Equity Interests

3.01 Class 1. Class 1 consists of the Allowed Secured Claim, if any, of Charles Fletcher.

3.02 Class 2. Class 2 consists of the Allowed Secured Claim of the Imperial County Tax Collector.

3.03 Class 3. Class 3 consists of Allowed Secured Claim of the San Diego Tax Collector.

3.04 Class 4. Class 4 consists of Allowed Secured Claim, if any, of Locati Global Holdings, Inc.



1 claim shall receive on the Distribution Date payment in an amount equal to the value  
2 of the Class 4 claimant's interest in property owned by the Debtor. To the extent that  
3 the Class 4 claim is determined by the Court to be an allowed claim and all or part of  
4 that claim is determined to be an unsecured claim, the Class 4 claimant's unsecured  
5 claim shall receive the same treatment as the claims in Class 5.

6 4.05 Class 5 – Unsecured Claims. Class 5 is impaired. The holders of  
7 general unsecured claims shall receive on the Distribution Date a pro rata share of the  
8 Cash Assets of the Debtor remaining after the payment of Classes 1, 2, 3 and 4.

9 4.06 Class 6 – Equity Holders. Class 6 is unimpaired. The equity holders  
10 shall receive on the Distribution Date a pro rata share of the Cash Assets of the Debtor  
11 remaining after the payment of Classes 1, 2, 3, 4 and 5.

## 12 ARTICLE 5

### 13 Means for Implementing the Plan

14 5.01 Sale of Assets. The Debtor shall sell all of its real and non-cash  
15 personal property of every kind and description including, without limitation, all of  
16 Debtor's real property, equipment, inventories, technology, patents, patent  
17 applications, copyrights, trademarks, trade names, trade secrets, know-how, and other  
18 intellectual property rights, and Debtor's rights under all contracts (collectively, the  
19 "Assets"). The sale will include the assumption by Debtor of such executory contracts  
20 and unexpired leases as the buyer selects and the concomitant assignment of those  
21 contracts and leases to the buyer. The Assets shall not include any cash or cash  
22 equivalents, deposit accounts, accounts receivable, bankruptcy avoidance claims, or  
23 any other assets that are specifically excluded by the asset purchase agreement entered  
24 into between the Debtor and the ultimate buyer (the "Buyer").

25 5.02 Procedure and Timing of Sale. The sale of the Debtor's assets shall be  
26 free and clear of all liens and interests pursuant to Bankruptcy Code section 363(f).  
27 The sale may be approved prior to confirmation of this Plan pursuant to a motion filed  
28

1 by the Debtor, or may be accomplished after confirmation of this Plan. If the sale is  
2 conducted after confirmation of this Plan, it shall comply with all of the requirements  
3 of Bankruptcy Code section 363.

4 5.03 Revesting of Property. Except as otherwise provided in the Plan, all  
5 property of the Debtor which has not been previously sold shall be revested in the  
6 Reorganized Debtor on the Effective Date.

7 5.04 Reorganized Debtor Power and Authority. Subject to the provisions of  
8 the Plan, the Reorganized Debtor may administer, manage, operate, or liquidate all  
9 property, contractual interests, setoffs, and recoupments of the estate and may  
10 prosecute or settle any and all causes of action of any type not otherwise disposed of  
11 by the Plan.

12 Without limiting any other power or authority granted to the Reorganized  
13 Debtor hereunder, the Reorganized Debtor shall have the power and authority to (1)  
14 prosecute, settle, compromise, and/or dismiss any of the causes of action owned by  
15 the bankruptcy estate, (2) manage and protect the estate and distribute the net  
16 proceeds as specified herein, (3) grant options to purchase, enter into contracts to sell,  
17 and sell the assets of the estate or any part or parts thereof on such terms as it shall  
18 deem appropriate in its independent business judgment, (4) release convey, assign, or  
19 sell any right, title, or interest in or about the estate, (5) pay and discharge any costs,  
20 expenses, fees, or obligations deemed necessary to preserve the estate, (6) purchase  
21 insurance to protect the estate, the Reorganized Debtor, and their agents and  
22 professionals from liability, (7) deposit funds and draw checks and make  
23 disbursements thereof, (8) employ and compensate brokers to help sell property of the  
24 estate, (9) file and prepare tax returns on behalf of the estate, (10) take any action  
25 required or permitted by this Plan, (11) employ attorneys, accountants, brokers, and  
26 other professionals, as it deems necessary to assist it in performing its duties as  
27 Reorganized Debtor, and compensate such persons pursuant to the Plan, (12) settle,  
28

1 compromise, or adjust by arbitration or otherwise, any disputes or controversies in  
2 favor of or against the estate subject to approval of the Bankruptcy Court, (13)  
3 abandon property of the estate pursuant to section 554 of the Bankruptcy Code, (14)  
4 waive or release rights of any kind, and (15) cause the Debtor to be dissolved.

5       5.05 Distributions. The Reorganized Debtor may make any number of  
6 interim distributions as it deems appropriate. Distributions shall be made to the  
7 addresses contained in the proofs of claim filed by such holders or the last known  
8 address of such holders. Checks issued by the Reorganized Debtor shall be null and  
9 void if not cashed within ninety days of the date of issuance thereof. If any  
10 distribution is returned as undelivered, no further distributions to such holder shall be  
11 made unless and until the Reorganized Debtor is notified of such holder's then current  
12 address, at which time all missed distributions shall be made to such holder without  
13 interest. Amounts with respect to undeliverable distributions made by the  
14 Reorganized Debtor shall be returned to the Reorganized Debtor until such  
15 distributions are claimed. All Claims for undeliverable distributions shall be made on  
16 or before the second anniversary of the Effective Date. After such date, all unclaimed  
17 property shall be deemed property of the Reorganized Debtor and no longer subject to  
18 the terms of the Plan, and all Claims against the Reorganized Debtor shall be forever  
19 barred.

20       5.06 Reserve. Prior to making distributions to particular classes, the  
21 Reorganized Debtor shall reserve sufficient cash for the payment of (1) all estimated  
22 post-confirmation expenses of the Reorganized Debtor and its agents, (2) all Claims  
23 in senior classes, and (3) Contested Claims in senior classes and Contested Claims in  
24 the class receiving the distribution. No reserve shall be established for any contingent  
25 Claim in the absence of a Final Order requiring such reserve. If a contingent Claim  
26 becomes fixed and absolute, the holder of such contingent Claim shall receive  
27 distributions pursuant to section 502(j) of the Bankruptcy Code, to the extent the  
28



Claim may otherwise be Allowed. In the event a contingent Claim is entitled to distributions pursuant to section 502(j) of the Bankruptcy Code, such Claim shall receive pro rata distribution in the proportion it bears to all other Allowed Claims of the same Class.

5.07 Post-confirmation Compensation of Reorganized Debtor's Professionals. The Reorganized Debtor's professionals shall be entitled to compensation and reimbursement of expenses. The Reorganized Debtor's professionals may invoice the Reorganized Debtor directly on a monthly basis and also serve a copy of the invoice on the Office of the United States Trustee. In the event no objection to payment of an invoice is filed and served on the Reorganized Debtor and the billing professional by the Office of the United States Trustee within fifteen (15) days of service of the invoice and the Reorganized Debtor does not otherwise object to payment of the invoice, the Reorganized Debtor may pay such invoice without further order of the Court; provided further however, that in the event an objection is timely filed and served on the Reorganized Debtor and the billing professional or in the event of a dispute between the Reorganized Debtor and the professional, the professional may submit an application for payment to the Court, and the Court retains jurisdiction to hear such applications and enter appropriate orders thereon.

5.08 Approval of Settlements. Court approval for compromises entered into by the Reorganized Debtor shall be obtained pursuant to the Notice of Intended Action procedure set forth in Bankruptcy Local Rule 2002-2.

## ARTICLE 6

## Executory Contracts and Unexpired Leases

6.01 Assumption and Rejection. At the time of a closing of a sale of the Assets pursuant to the Plan or pursuant to a motion to sell the Assets under Bankruptcy Code section 363, the Debtor shall assume the Desert Line Lease, the

1 Desert Line Sublease, and all other leases and executory contracts designated by the  
2 Buyer and assign those leases and executory contracts to the Buyer. All other  
3 executory contracts and unexpired leases shall be rejected as of the Effective Date.

4 6.02 Bar to Rejection Damages. Any individual or entity holding a Claim  
5 based upon the rejection of an executory contract or unexpired lease pursuant to this  
6 Article must, within thirty days after Confirmation, file a proof of claim with the  
7 Bankruptcy Court. Any such Claims shall be treated as Class 5 unsecured Claims  
8 unless the Bankruptcy Court orders otherwise. The failure of any such individual or  
9 entity to file a proof of claim within the specified time period will result in the  
10 disallowance of such Claim.

## 11 ARTICLE 7

### 12 Procedures for Resolving and Treating Contested and Contingent Claims

13 7.01 Objection Deadline. Objections to Claims, whether filed by the Debtor,  
14 the Reorganized Debtor or creditors, must be filed not later than 90 days following the  
15 Effective Date. This section shall not limit parties' rights to object to Claims, if any,  
16 filed or amended after the Effective Date, or to seek an extension of the time to object  
17 to Claims for cause shown.

18 7.02 Time for Filing Administrative Claims. Administrative Claims against  
19 the Debtor, other than the applications of court-approved professionals, must be filed  
20 within thirty days following the entry of an order confirming the Plan.

## 21 ARTICLE 8

### 22 Miscellaneous Provisions

23 8.01 Modification of Plan. Modifications of the Plan may be proposed in  
24 writing by the Debtor at any time before confirmation, provided that the Plan, as  
25 modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code,  
26 and the Debtor shall have complied with section 1125 of the Bankruptcy Code. The  
27 Plan may be modified at any time after confirmation and before its substantial  
28

consummation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modification. A holder of a Claim or equity interest that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

8.02 Revocation of Plan. The Debtor reserves the right to revoke and withdraw the Plan prior to the commencement of the hearing to confirm the Plan. If the Debtor revokes or withdraws the Plan, or if confirmation of the Plan does not occur, then the Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any person in any further proceedings involving the Debtor.

8.03 Cramdown. The Debtor requests the Bankruptcy Court to confirm the Plan pursuant to the provisions of section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed not to have accepted the Plan and any Class that fails to accept the Plan.

8.04 US Trustee Fees. The Reorganized Debtor shall file timely post-confirmation reports as required by law and shall pay all post-confirmation fees pursuant to 28 U.S.C. § 1930(a)(6).

## ARTICLE 9

## Effects of Plan Confirmation

9.01 Injunction. Except as to obligations arising under the Plan, and except in connection with the enforcement of the terms of the Plan or any documents provided for or contemplated in the Plan, all entities who have held, hold or may hold Claims

1 against or Interests in the Debtor or the Estate that arose prior to the Effective Date  
2 are permanently enjoined from: (a) commencing or continuing in any manner, directly  
3 or indirectly, any action or other proceeding of any kind against the Estate, the  
4 Reorganized Debtor, or any property of the Reorganized Debtor with respect to any  
5 such Claim or Interest; (b) the enforcement, attachment, collection or recovery by any  
6 manner or means, directly or indirectly, of any judgment, award, decree, or order  
7 against the Reorganized Debtor the Estate, or any property of the Reorganized Debtor  
8 or the Estate, with respect to any such Claim or Interest; (c) creating, perfecting or  
9 enforcing, directly or indirectly, any Lien or encumbrance or any kind against the  
10 Reorganized Debtor, the Estate, or any property of the Reorganized Debtor or the  
11 Estate with respect to any such Claim or Interest; and (d) any act, in any manner, in  
12 any place whatsoever, that does not conform to or comply with the provisions of the  
13 Plan with respect to such Claim or Interest. Nothing contained in this Article shall  
14 prohibit the holder of a timely-filed proof of Claim from litigating its right to seek to  
15 have such Claim declared an Allowed Claim and paid in accordance with the  
16 distribution provisions of the Plan, or enjoin or prohibit the interpretation or  
17 enforcement by the holder of such Claim of any of the obligations of the Estate or the  
18 Reorganized Debtor under the Plan. Nothing contained in this Article shall prohibit  
19 the Reorganized Debtor from pursuing any Claims against third parties.

20 9.02 Effect of Confirmation. Except as otherwise expressly provided in the  
21 Plan, the confirmation of the Plan shall, if not vacated, have the effect described in  
22 Bankruptcy Code 1141 with respect to the Debtor and, without in any way limiting  
23 the foregoing, shall (i) bind all holders of Claims and Interests against the Debtor,  
24 whether or not they accept the Plan, and (ii) discharge the Debtor effective  
25 immediately from any Claim and any “debt” (as that term is defined in section  
26 101(12) of the Bankruptcy Code) incurred before the Confirmation Date, and liability  
27 of the Debtor in respect thereof is extinguished completely including, without  
28

1 limitation, any liability of a kind specified in section 502(g) of the Bankruptcy Code.  
2 In addition, except as otherwise provided in the Plan, confirmation of the Plan  
3 pursuant to the Confirmation Order acts as a discharge effective as of the  
4 Confirmation Date, as to each Claim or Interest holder receiving or entitled to receive  
5 any distribution under the Plan in respect of any direct or indirect right or Claim or  
6 Interest such Claim or Interest holder had or may have had against or in the Debtor.  
7 On and after the Confirmation Date, as to every discharged Claim and Interest the  
8 Debtor, every holder of such Claim or Interest against the Debtor shall be precluded  
9 from asserting against the Reorganized Debtor or its assets, any further Claim or  
10 Interest based on any document, instrument or act, omission, transaction or other  
11 activity of any kind or nature that occurred prior to the Confirmation Date.

12 9.03 Binding Effect of Plan. Except as otherwise provided in the Plan or in  
13 section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the  
14 provisions of the Plan shall bind any holder of a Claim against, or Interest in, the  
15 Debtor, the Estate and their respective successors or assigns, whether or not the Claim  
16 or Interest of such holders is impaired under the Plan and whether or not such holder  
17 has accepted the Plan. The rights, benefits and obligations of any Person named or  
18 referred to in the Plan, whose actions may be required to effectuate the terms of the  
19 Plan, shall be binding on and shall inure to the benefit of any heir, executor,  
20 administrator, successor or assign of such Person (including, without limitation, any  
21 Trustee or any other trustee appointed for the Debtor under Chapters 7 or 11 of the  
22 Bankruptcy Code).

ARTICLE 10

Jurisdiction of the Bankruptcy Court

10.01 The Bankruptcy Court shall retain jurisdiction to the fullest extent permitted by law.

February 6, 2017

VANDERHOFF LAW GROUP

/s/ Alan Vanderhoff

By: \_\_\_\_\_

Alan Vanderhoff

Attorneys for Pacific Imperial Railroad, Inc.

In re Pacific Imperial Railroad, Inc.

Case No. 16-06253-LT11

PROOF OF SERVICE BY ECF

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding. My business address is 600 West Broadway, Suite 1550, San Diego, California 92101.

On February 6, 2017, I served the following document(s):

**Notice of Hearing and Motion for Approval of Chapter 11 Disclosure Statement**

**Motion to Approve Proposed Disclosure Statement to Debtor's Plan of Reorganization Dated February 6, 2017**

**[Proposed] Disclosure Statement to Debtor's Plan of Reorganization Dated February 6, 2017**

**Debtor's Plan of Reorganization Dated February 6, 2017**

by CM/ECF Notice Of Electronic Filing by causing such document(s) listed above to be served through this Court's electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth in the service list obtained from this Court on the Electronic Mail Notice List set forth below.

- Robert R. Barnes    bbarnes@allenmatkins.com, jholman@allenmatkins.com
- Michael D. Breslauer    mbreslauer@swsslaw.com, wyones@swsslaw.com
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- United States Trustee    ustp.region15@usdoj.gov
- Alan Vanderhoff    alan.vanderhoff@vanderhofflaw.com, alanvanderhoff@cox.net

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. This proof of service was executed on February 6, 2017, in San Diego, California.

/s/ Alan Vanderhoff

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Alan Vanderhoff