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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re:

Case No. 16-06253-LT11

11 PACIFIC IMPERIAL RAILROAD, INC.,
12
13 Debtor.

**[PROPOSED] DISCLOSURE
STATEMENT TO DEBTOR'S FIRST
AMENDED PLAN OF
REORGANIZATION DATED
FEBRUARY 6 March 17, 2017**

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

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17 Pacific Imperial Railroad, Inc., debtor-in-possession in the above-captioned case (the
18 "Debtor"), is providing this Disclosure Statement to each known holder of a Claim or
19 Interest in the Debtor for the purpose of soliciting acceptances of its Plan of Reorganization
20 Dated ~~February 6~~ March 17, 2017 (the "Plan")¹ and to enable Creditors to make an informed
21 decision with regard to voting on the Plan. A copy of the Plan is attached hereto as Exhibit
22 "A."

23 **I. INTRODUCTION**

24 The purpose of this Disclosure Statement is to provide holders of claims against or
25 interest in the Debtor with adequate information to enable them to make informed
26

26 _____

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28 ¹¹ Many terms, capitalized and otherwise, used in this Disclosure Statement are defined in the Plan.

1 judgments about the Plan before exercising their right to vote for acceptance or rejection of
2 the Plan.

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

6 Alan Vanderhoff, Esq.
7 Vanderhoff Law Group
8 600 West Broadway, Suite 1550
9 San Diego, CA 92101

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

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

22 The Plan is summarized below under the heading "Summary of the Plan," but all
23 summaries are qualified by the terms of the Plan itself, which are in all instances
24 controlling. You may not rely upon this Disclosure Statement for any purpose other than to
25 determine how to vote on the Plan. Nothing contained in the Plan or Disclosure Statement

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28 You should consult the Plan for those definitions.

1 shall constitute an admission of any fact or liability by any party, or be admissible in any
2 proceeding involving the Debtor or any other party.

3 The statements contained in this Disclosure Statement are made as of the date hereof,
4 unless another time is specified herein. Neither delivery of this Disclosure Statement nor
5 any exchange of rights made in connection with the Disclosure Statement or the Plan shall
6 under any circumstances create an implication that there has been no change in the facts set
7 forth herein after the date the Disclosure Statement was prepared. Although the Debtor
8 believes that the contents of this Disclosure Statement are complete and accurate to the best
9 of its knowledge, information and belief, the Debtor is unable to warrant or represent that
10 the information contained herein is without any inaccuracy.

11 After notice and a hearing held on _____, March 20, 2017, and upon the
12 request of the Debtor, the Court, pursuant to Section 1125 of the Bankruptcy Code,
13 approved this Disclosure Statement as containing information of a kind, and in sufficient
14 detail, as far as is reasonably practicable in light of the nature and history of Debtor and the
15 condition of its books and records, that would enable a hypothetical reasonable investor,
16 typical of the Debtor's creditors and shareholders, to make an informed judgment to vote to
17 accept or reject the Plan. Approval of this Disclosure Statement by the Court does not,
18 however, constitute a recommendation by the Court to accept or reject the Plan.

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

21 **II. BACKGROUND INFORMATION**

22 **A. Introduction.**

23 Pacific Imperial Railroad, Inc. ("PIR") was created for the purpose of rehabilitating
24 and operating the Desert Line rail line (the "Desert Line"). The Desert Line is the railroad
25 right of way stretching approximately 70 miles from Mileposts 59.6 at or near the U.S.
26 Border in Division, California to Milepost 130.0 at Plaster City, California. PIR leases the
27 Desert Line pursuant to that certain Amended and Restated Desert Line Lease and
28 Operating Agreement dated as of December 20, 2012, as amended, by and between Pacific

1 Imperial Railroad, Inc., San Diego and Arizona Eastern Railway Company, a Nevada
2 nonprofit corporation, and San Diego Metropolitan Transit Development Board also known
3 as the San Diego Metropolitan Transit System, and all amendments thereto (the “Desert
4 Line Lease”).

5 In May of 2016, PIR subleased a substantial portion of the Desert Line to Baja
6 California Rail Road, Inc. (“Baja Rail”) pursuant to that certain Cali-Baja Joint Venture
7 Sublease and Operating Agreement dated as of May 31, 2016, by and among Pacific
8 Imperial Railroad, Inc. and Baja California Rail Road, Inc. (the “Desert Line Sublease”).
9 Approximately 11 miles of the Desert Line were not subleased to Baja Rail. In addition, PIR
10 owns real property adjacent to the Desert Line which may be suitable for the development
11 of an intermodal facility. An intermodal facility is a facility that can transfer shipping
12 containers from one mode of transportation to another – in this case, from trucks to trains.

13 The Debtor’s plan of reorganization is a liquidating plan. The Debtor will sell its
14 remaining non-cash assets, assume and assign the Desert Line Lease, and will distribute the
15 cash proceeds from the sale of those assets to its creditors in the priority set forth in the
16 Bankruptcy Code. The Debtor’s assets will be sold pursuant to a motion brought under
17 Bankruptcy Code section 363(f). The Debtor will assume and assign executory contracts
18 and unexpired leases pursuant to Bankruptcy Code section 365, subject to the rights of non-
19 debtor parties to such contracts and leases. The sale is not dependent upon the confirmation
20 of the Plan and may occur either before or after confirmation of the Plan.

21 **B. Description the Desert Line, the Desert Line Lease, and the Desert Line**
22 **Sublease.**

23 **1. The Desert Line.**

24 Over the span of approximately 70 miles, the Desert Line has 17 tunnels and 57
25 bridges. Both bridges and tunnels are costly features to maintain even when in the best of
26 conditions, let alone situations in which remediation work may be required. Additionally, a
27 significant portion of the line serpentine through the Carrizo Gorge Canyon where the edge
28 of the right of way meets with near-vertical drops off rocky precipices. This poses several

1 challenges for rehabilitation and the maintenance of way given the extreme remoteness and
2 inaccessibility. For the portion of rail line running through the canyon, there is little to no
3 room for maintenance equipment to sit adjacent to the line to allow trains to pass. This
4 means that in many cases the maintenance must be performed from the rail line itself. The
5 line also features a prolonged ruling grade of 1.4% through the Carrizo Gorge, with the
6 approaches to the Gorge reaching grades up to 2.2%. The railroad is curvy, with over sixty
7 percent of the route miles featuring curvature, much of which exceeds ten degrees. These
8 numerous curves not only increase wear on the track structure, requiring more frequent
9 replacement of track components, but also severely constrict the length of railcars and trains
10 that can traverse the line. Simply put, the railroad is among the most rugged railroads, both
11 operationally and regarding maintenance, in the country.

12 **2. The Desert Line Lease.**

13 The Desert Line Lease was entered into by and between the Debtor, on the one hand,
14 and San Diego and Arizona Eastern Railway Company, a Nevada nonprofit corporation, and
15 San Diego Metropolitan Transit Development Board also known as the San Diego
16 Metropolitan Transit System, on the other. The Desert Line Lease is for a term of 50 years
17 with an option to renew for an additional 49 years. ~~#Beginning on July 1, 2017, Section~~
18 ~~2.1.3.7 of the Desert Line Lease~~ requires ~~lease payments~~minimum rent of \$1
19 ~~million,050,000~~ per year in semi-annual payments of \$~~500,000 each. It also requires~~
20 ~~525,000 (increasing by 5 percent every five years). Upon commencement of railroad~~
21 ~~operations, the lease~~ payment ~~of a percentages~~shall be the greater of the established
22 minimum rent amount or 7 percent of gross freight revenue ~~which in the amount of 7%~~
23 ~~beginning in the first year of limited operations.~~

24 The Desert Line Lease also contains repair and improvement “milestones.” Initial
25 repairs were to be completed within 12 months of the approval of the Debtor’s Desert Line
26 Rehabilitation Plan, followed by testing of the track with trains. Within 36 months of the
27 effective date of the Desert Line Lease, the Debtor was to have begun limited operations.
28 Full scale repairs were to be completed within 60 months of the lease effective date,

1 followed by full scale operations. For various reasons discussed below, the Debtor was not
2 able to raise sufficient funds to complete the milestones on time. As a result, the Debtor is ~~at~~
3 ~~risk of being~~ in default on various performance milestone provisions under the Desert Line
4 Lease ~~for failing to~~, which MTS has informed the Debtor must be cured in a timely perform
5 ~~the manner as a condition of assumption, and further that MTS will require adequate~~
6 assurance of future performance of performance milestones ~~set forth in coming due under~~
7 ~~the lease~~ Desert Line Lease from the Debtor and any proposed assignee of the Desert Line
8 Lease, with a full reservation of rights by MTS to object to a proposed assumption and
9 assignment of the Desert Line Lease.

10 **3. Challenges with the Desert Line Lease.**

11 Although the Desert Line Lease is PIR's most valued asset, it is also the source of
12 several challenges. First amongst these challenges is the biannual minimum lease payment
13 of \$500,000. Given that PIR has no operating income, these payments have resulted in PIR
14 assuming additional debt every six-month interval when the payments are due. From a
15 fundraising standpoint, the high lease payments every six months have put undue pressure
16 on PIR's management to shift fundraising focus to the payment of the lease rather than
17 rehabilitation efforts. Originally, PIR had anticipated being fully vested and operational by
18 the close of 2015, however due to issues arising from past management teams, PIR
19 experienced substantial timeframe and material setback.

20 The second challenge with the lease is the obligation of 7% of annual gross freight
21 revenues that ultimately must be paid to MTS once the Desert Line is fully operational and
22 earning revenues. This has been a major roadblock for PIR with respect to securing
23 substantial long-term financing given that short lines, on average, have operating ratios at or
24 around 80%. If the Desert Line could be considered an "average" short line, this would
25 leave PIR with an approximate 13% operating profit margin available to pay taxes and
26 reinvest, and/or for distributing dividends to stockholders. This is not an attractive
27 opportunity from an investor's standpoint especially considering the Desert Line is likely to
28 have higher operating and maintenance costs due to the rugged nature of the line. It is

1 reasonable to assume that the Desert Line's operating ratio will exceed 80%. David L.
2 Parkinson, an unaffiliated and uninterested third party and Principal of Park Rail Co., a short
3 line operator who is familiar with the line, asserted that over his career he has operated short
4 line railroads with a 65% operating ratio; however, it was his opinion that because of the
5 Desert Line's 17 tunnels and 57 bridges, PIR would have much higher than average
6 maintenance of way costs. It was also Mr. Parkinson's opinion that if the Desert Line were
7 operated efficiently, it could have an operating ratio of approximately 80-84%. The reality
8 facing PIR is that the annual obligations of 7% of gross freight revenues could cause PIR to
9 incur a deficit if it isn't operating below a 93% operating ratio.

10 Another key challenge with the lease has been that of the reconstruction and
11 operating performance milestones. In July of 2015, it was clear that PIR had no chance of
12 meeting initial milestones originally set forth in December of 2012. It had become difficult
13 to attract sufficient investment to complete costly rehab work. As such, PIR revised its
14 operational and reconstruction phasing strategy so that it included the build out of an
15 intermodal facility at Coyote Wells that could accommodate trucking from Tijuana's
16 maquiladoras, effectively bypassing the Baja Rail portion of rail. The rationale for such a
17 revision was that it would allow PIR to cut down on capital expenditures, given it primarily
18 entailed rehab of approximately ten miles of track, or about 14% of Desert Line, and
19 avoided much of the costly repairs associated with track structures in the Carrizo Gorge
20 Canyon. It would also enable PIR to earn revenue quickly and independently of an
21 agreement with Baja Rail, allowing PIR to finance continued reconstruction on the balance
22 of the Desert Line by reinvesting earnings rather than going further into debt.

23 ~~MTS was accommodating of these issues~~ The Debtor requested and ~~on July 16, 2015,~~
24 MTS agreed in or about July 2015 to ~~approve modification~~ modifications of the Desert Line
25 Lease to change certain performance milestones ~~in the Desert Line Lease to provide~~ which
26 provided PIR with additional time to, among other things, complete ~~the revised~~ certain
27 construction ~~in order to become operational in accordance with the new strategy. However,~~
28 ~~PIR was unable to meet the revised milestone reconstruction deadlines due to the inability to~~

1 ~~obtaining financing in a timely manner. Although the phases and to begin railroad operations~~
2 ~~on the Desert Line. While~~ current ~~Management~~management of PIR ~~enjoys a positive and~~
3 ~~fairly amicable~~believes it has an ~~improved~~ relationship with MTS ~~representatives~~, it is
4 important to note that MTS ~~believes it~~ has the sole discretion to declare the ~~lease in default~~
5 ~~for PIR's failure to meet the milestones. Although there is a provision in the lease that lends~~
6 ~~substantial discretion to MTS to adjust milestones on a reasonable basis, not maintaining~~
7 ~~compliance with the~~ Desert Line Lease ~~exposes PIR to substantial undue risk in default~~
8 ~~based on PIR's failure to perform various performance milestones in a timely manner, and~~
9 ~~MTS has advised PIR that MTS has fully reserved its rights to refuse to grant any further~~
10 ~~requests for modifications of future performance milestones or to otherwise modify the~~
11 ~~terms of the Desert Line Lease.~~

12 **4. The Desert Line Sublease.**

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

21 Baja Rail paid PIR \$3,000,000 as initial consideration for the operating rights over
22 the Desert Line, and Baja Rail will be responsible for paying PIR semiannual lease
23 payments of \$425,000. Additionally, Baja Rail will be responsible for financing the
24 reconstruction of the Baja Rail Segment and maintaining compliance with reconstruction
25 milestones in the Desert Line Lease as they apply to the Baja Rail Segment.

26 **C. The Reasons for Bankruptcy.**

27 PIR had exhausted its efforts to raise investor capital to develop its remaining assets.
28 Restoring the last 10 miles of the Desert Line would cost approximately \$10 million.

1 Developing an intermodal facility would cost tens of millions of dollars more. During its
2 entire history, PIR was unable to attract capital investment at a scale that would permit PIR
3 to develop its assets. The reasons included such things as a perception by prospective
4 investors that the revenue based portion of the rent under the Desert Line Lease was too
5 high and that the Desert Line had been and continues to be the subject of intense litigation
6 by multiple parties.

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

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

18 ~~It was~~ Current management of the Debtor decided that a chapter 11 bankruptcy would
19 be the best course of action for PIR. A chapter 11 bankruptcy case would stay the pending
20 litigation against PIR, would enable PIR to sell its remaining assets to a buyer who could
21 receive clean title to the assets free of the threat of future litigation, and it would provide a
22 forum where creditors and shareholders could voice their view, concerns, and objections to
23 any course of action proposed by PIR. After a full and fair opportunity for all parties to
24 heard, the bankruptcy judge would ultimately decide what course of action was in the best
25 interests of the bankruptcy estate and its creditors.

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1 III. SUMMARY OF THE PLAN

2 A. Introduction.

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

8 B. Classification and Treatment of Claims.

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

13 **1. Class 1.** Class 1 consists of the Allowed Secured Claim, if any, of Charles
14 Fletcher. Class 1 is impaired. The holder of the Class 1 claim, Charles Fletcher, asserts a
15 security interest in all of the Debtor's assets including, without limitation, the Desert Line
16 Lease. The Debtor believes that the security interest of Charles Fletcher in the Desert Line
17 Lease is unperfected and is subject to avoidance under applicable bankruptcy law. **Charles**
18 **Fletcher contests this and contends his claim is fully secured and that the balance of the**
19 **note, all accrued interest, fees and other sums due under the Convertible Grid Note and**
20 **Security Agreement are secured by the Debtor's assets and should be paid as an Allowed**
21 **Secured Claim with priority over all other claims in the Estate.**

22 The holder of the Class 1 claim shall receive payment on the Distribution Date equal
23 to the value of the property of the Debtor in which the holder of the Class 1 claim has a
24 valid, duly-perfected, security interest as determined by the Bankruptcy Court or as set forth
25 in a compromise between the Debtor and Mr. Fletcher which is approved by the Bankruptcy
26 Court. To the extent that all or a portion of the security interest asserted by the holder of the
27 Class 1 claim is avoided or compromised, the Class 1 claim shall receive the same treatment
28 as the claims in Class 5.

1 ~~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 ~~2.3.~~ **Class 3.** Class 3 consists of the Allowed Secured Claim of the San
5 Diego Tax Collector. Class 3 is unimpaired. The holder of the Class 3 claims shall be paid
6 the later of the Distribution Date or the date upon which the Class 3 claims becomes due.

7 ~~3.4.~~ **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 ~~4.5.~~ **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 ~~5.6.~~ **Class 6.** Class 6 consists of the holders of equity interests in the
22 Debtor. Class 6 is unimpaired. The equity holders shall receive on the Distribution Date a
23 pro rata share of the Cash Assets of the Debtor remaining after the payment of Classes 1, 2,
24 3, 4 and 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 and Unexpired Leases .**

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 and to assume and assign
6 executory contracts and unexpired leases pursuant to Bankruptcy Code section 365, the
7 Debtor shall assume the Desert Line Lease, the Desert Line Sublease, and all other leases
8 and executory contracts designated by the Buyer and assign those leases and executory
9 contracts to the Buyer-, subject to the rights of non-debtor parties to such contracts and
10 leases. All other executory contracts and unexpired leases shall be rejected as of the
11 Effective Date of the Plan.

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

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

19 **1. Sale of Assets.** The Debtor shall sell all of its real and non-cash personal
20 property of every kind and description including, without limitation, all of Debtor's real
21 property, equipment, inventories, technology, patents, patent applications, copyrights,
22 trademarks, trade names, trade secrets, know-how, and other intellectual property rights, and
23 Debtor's rights under all contracts (collectively, the "Assets"). The sale will include the
24 assumption by Debtor of such executory contracts and unexpired leases as the buyer selects
25 and the concomitant assignment of those contracts and leases to the buyer- pursuant to
26 Bankruptcy Code section 365, subject to the rights of non-debtor parties to such contracts
27 and leases. The Assets shall not include any cash or cash equivalents, deposit accounts,
28 accounts receivable, bankruptcy avoidance claims, or any other assets that are specifically

1 excluded by the asset purchase agreement entered into between the Debtor and the ultimate
2 buyer (the “Buyer”).

3 The sale will be free and clear of all liens and interests pursuant to Bankruptcy Code
4 section 363(f). All liens on the assets to be sold will attach to the proceeds of the sale in the
5 same validity and priority and subject to the same defenses and avoidability, if any, as
6 before the sale. The proceeds of the Sale of Assets will be maintained by the Debtor in a
7 federally insured interest-bearing account in compliance with section 345 of the Code.

8 **2. Procedure and Timing of Sale.** The sale of the Debtor’s assets shall be
9 free and clear of all liens and interests pursuant to Bankruptcy Code section 363(f). The sale
10 will be pursuant to a motion to sell the Assets free and clear of liens. The sale may be
11 approved prior to confirmation of this Plan, or may be accomplished after confirmation of
12 this Plan. If the sale is conducted after confirmation of this Plan, it shall comply with all of
13 the requirements of Bankruptcy Code section 363 and section 365.

14 On February 10, 2017, the Debtor filed a motion with the Bankruptcy Court to sell
15 substantially all of its non-cash assets and to assign the Desert Line Lease to International
16 Transportation Association LLC (“ITA”) pursuant to the terms of an Asset Purchase
17 Agreement (the “APA”). Baja Rail owns a 50% interest in ITA. ITA’s obligations under the
18 APA is guaranteed by Baja Rail pursuant to a written guarantee. The purchase price is
19 \$3,800,000. ITA has paid a deposit of \$100,000. The remainder of the purchase price is due
20 90 days following the closing. The sale is subject to MTS board approval. The Debtor
21 expects the MTS board to approve the sale in April of 2017. The sale is expected to close
22 immediately upon MTS board approval.

23 The Debtor’s motion to sell its assets and assume and assign the Desert Line Lease
24 was not opposed by any party. The Bankruptcy Court held a hearing on the motion on
25 March 10, 2017. The Bankruptcy Court approved the sale on that date.

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

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

5 Without limiting any other power or authority granted to the Reorganized
6 Debtor hereunder, the Reorganized Debtor shall have the power and authority to (1)
7 prosecute, settle, compromise, and/or dismiss any of the causes of action owned by the
8 bankruptcy estate, (2) manage and protect the estate and distribute the net proceeds as
9 specified herein, (3) grant options to purchase, enter into contracts to sell, and sell the assets
10 of the estate or any part or parts thereof on such terms as it shall deem appropriate in its
11 independent business judgment, (4) release convey, assign, or sell any right, title, or interest
12 in or about the estate, (5) pay and discharge any costs, expenses, fees, or obligations deemed
13 necessary to preserve the estate, (6) purchase insurance to protect the estate, the
14 Reorganized Debtor, and their agents and professionals from liability, (7) deposit funds and
15 draw checks and make disbursements thereof, (8) employ and compensate brokers to help
16 sell property of the estate, (9) file and prepare tax returns on behalf of the estate, (10) take
17 any action required or permitted by this Plan, (11) employ attorneys, accountants, brokers,
18 and other professionals, as it deems necessary to assist it in performing its duties as
19 Reorganized Debtor, and compensate such persons pursuant to the Plan, (12) settle,
20 compromise, or adjust by arbitration or otherwise, any disputes or controversies in favor of
21 or against the estate subject to approval of the Bankruptcy Court, (13) abandon property of
22 the estate pursuant to section 554 of the Bankruptcy Code, (14) waive or release rights of
23 any kind, and (15) cause the Debtor to be dissolved.

24 **5. Disbursements.** The Reorganized Debtor may make any number of
25 interim distributions on account of allowed claims and expenses as it deems appropriate.
26 Distributions shall be made to the addresses contained in the proofs of claim filed by such
27 holders or the last known address of such holders. Checks issued by the Reorganized
28 Debtor shall be null and void if not cashed within ninety days of the date of issuance

1 thereof. If any distribution is returned as undelivered, no further distributions to such holder
2 shall be made unless and until the Reorganized Debtor is notified of such holder's then
3 current address, at which time all missed distributions shall be made to such holder without
4 interest. Amounts with respect to undeliverable distributions made by the Reorganized
5 Debtor shall be returned to the Reorganized Debtor until such distributions are claimed. All
6 Claims for undeliverable distributions shall be made on or before the second anniversary of
7 the Effective Date. After such date, all unclaimed property shall be deemed property of the
8 Reorganized Debtor and no longer subject to the terms of the Plan, and all Claims against
9 the Reorganized Debtor shall be forever barred.

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

21 **7. Post-confirmation Compensation of Reorganized Debtor's**
22 **Professionals.** The Reorganized Debtor's professionals shall be entitled to compensation
23 and reimbursement of expenses. The Reorganized Debtor's professionals may invoice the
24 Reorganized Debtor directly on a monthly basis and also serve a copy of the invoice on the
25 Office of the United States Trustee. In the event no objection to payment of an invoice is
26 filed and served on the Reorganized Debtor and the billing professional by the Office of the
27 United States Trustee within fifteen (15) days of service of the invoice and the Reorganized
28 Debtor does not otherwise object to payment of the invoice, the Reorganized Debtor may

1 pay such invoice without further order of the Court from non-estate property or from Net
2 Sale Proceeds provided that all secured claims have been paid in full; provided further
3 however, that in the event an objection is timely filed and served on the Reorganized Debtor
4 and the billing professional or in the event of a dispute between the Reorganized Debtor and
5 the professional, the professional may submit an application for payment to the Court, and
6 the Court retains jurisdiction to hear such applications and enter appropriate orders thereon.

7 **F. Objections to Claims.**

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

13 **G. Approval of Settlements.**

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

17 **H. Preservation and Prosecution of Claims against Third Parties.**

18 All claims that the Debtor has against third parties including, without limitation,
19 avoidance claims arising under the Bankruptcy Code and fraudulent conveyance claims
20 arising under non-bankruptcy law are preserved to the fullest extent allowed by law.
21 Nothing in the Plan or Disclosure Statement is intended to be a waiver of such claims.
22 Failure to identify particular parties against which the Debtor may have such claims shall
23 not constitute a waiver of such claims. All creditors and interest holders voting on the Plan
24 who received any payment or transfer of property from the Debtor in the four years
25 preceding the Petition Date should assume for the purposes of voting that they might be
26 sued by the Reorganized Debtor for the recovery of such payments or distributions.

27 The Debtor may have claims against Mark Maasch and Maasch Law, Inc. for
28 misfeasance and malfeasance related to breaches of his professional duties to the Debtor. All

1 such claims are expressly preserved and will be available for prosecution by the
2 Reorganized Debtor.

3 The Debtor has not completed its analysis of potential avoidance actions against third
4 parties and cannot state what avoidance claims the bankruptcy estate may have. Parties who
5 have received significant distributions from the Debtor during the four years preceding the
6 Petition Date include the following:

- | | |
|---|---|
| 7 <u>Charles McHaffie</u> | <u>Maasch Law, Inc.</u> |
| 8 <u>CC Trust</u> | <u>Mark Maasch</u> |
| 9 <u>Charlemagne Trust</u> | <u>Turner & Maasch, Inc.</u> |
| 10 <u>Verdelle Jones</u> | <u>Stoecklein Law Group, LLP</u> |
| 11 <u>Sheila Lemire</u> | <u>Donald Stoecklein</u> |
| 12 <u>Tracie Matsuo</u> | <u>Broadway Lexington, LLC</u> |
| 13 <u>Jennifer Trowbridge</u> | <u>Inter- Zone, Inc.</u> |
| 14 <u>Carrizo Gorge Railway Police</u> | <u>Locati Global Holdings, LLC</u> |
| 15 <u>MIR International Services Inc.</u> | <u>Montana Rail Inc.</u> |
| 16 <u>Camden Healthcare, Inc.</u> | <u>Dwight Jory</u> |
| 17 <u>American Pacific Constructors</u> | <u>All entities owned or controlled by Dwight Jory</u> |
| 18 <u>Joseph Zappala</u> | <u>All entities owned or controlled by Charles McHaffie</u> |
| 19 <u>Maria Sherwood</u> | <u>Philip Mindlin</u> |

20
21 The list above is not intended to imply that the Debtor has actionable avoidance
22 claims against all of the parties that are listed. Rather, the list is simply some of the parties
23 who have received significant distributions from the Debtor. The names are listed only to
24 assist in preserving claims that may or may not exist. Nor does the absence of a name on the
25 list imply that the Debtor does not have avoidance claims against that unlisted party or that
26 the Debtor intends to waive claims against such a party. It is the Debtor's intention to
27 preserve all claims of every kind that the Debtor may have against all parties.
28

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

In the present case, the Plan is a liquidating plan of reorganization. The assets will be sold as they would be in a chapter 7 case. The timing of the assumption and assignment of the Desert Line Lease is critical in this case. The Desert Line Lease is in default due to the inability of the Debtor to timely complete certain milestone improvements. The MTS has expressed concern regarding the defaults and has indicated that it reserves the right to declare a default under the Desert Line Lease if a sale to a viable qualified party is not completed quickly, and existing defaults are not cured promptly, and adequate assurance of future performance by such purchasing party is not provided to the satisfaction of the MTS. If the case were to be converted to a chapter 7, it is not certain that a Chapter 7 trustee could assume and assign the Desert Line Lease within timeframes acceptable to the MTS. It is possible that the primary asset of the Debtor could be lost if the Debtor's case was converted to a chapter 7. Creditors under the Plan will receive as least as much as they would have received if the Debtor's case was a chapter 7 case.

V. ADDITIONAL SOURCES OF INFORMATION

Additional sources of information available to all creditors include the various schedules and reports which were filed by the Debtor in accordance with the provisions of Bankruptcy Code. These include, without limitation, the "Chapter 11 Statement of Financial Affairs for Debtor Engaged in Business," Schedules and monthly operating reports for all periods from October 2016 to the present. The schedules and operating reports described above are available for inspection and review by the public in the office of

1 the Clerk of the United States Bankruptcy Court located at 325 West F Street, San Diego,
2 California during regular business hours (Monday - Friday, 9:00 a.m. to 4:00 p.m.).

3 **VI. VOTING INSTRUCTIONS AND CONFIRMATION PROCEDURES**

4 **A. Voting Procedure.**

5 Bankruptcy is a type of creditor democracy. The Plan divides the Claims of
6 Creditors and Equity Interest holders into six (6) separate classes. Only impaired classes of
7 creditors are entitled to vote on the Plan. As a general rule "impaired classes" include
8 creditors who, under the Plan, will not receive payment in full of their Claims on the
9 Effective Date of the Plan. In this case, all Classes are impaired.

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

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

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

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

28

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

2 The Court has set _____, 2017, at _____, in Department Three (3) of the
3 Bankruptcy Court as the time, date and place for the hearing to determine whether the Plan
4 has been accepted by the requisite number of creditors and whether the other requirements
5 for confirmation of the Plan have been satisfied. Each creditor will receive, with this
6 Disclosure Statement, a Notice of Hearing on Confirmation of the Plan which gives the
7 details of that hearing and a date by which objections to the confirmation of the Plan, if any,
8 must be filed. That hearing may be continued from time to time by announcements made by
9 the Bankruptcy Court in open session at the hearing without any further written notice being
10 provided to you. Your attendance at the hearing on Confirmation of the Plan is encouraged.

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

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

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

21 The Plan may be confirmed even if it is not accepted by one or more of the impaired
22 classes, if the Court finds that the Plan does not discriminate unfairly against and is "fair and
23 equitable" as to each dissenting class. This provision is generally set forth in Section
24 1129(b) of the Bankruptcy Code. Generally, that section requires a showing that the Claims
25 in such Class either will receive the full value of the Claim or, if they receive less, no Class
26 with junior liquidation priority may receive anything. With respect to a class of unsecured
27 Claims, the term "fair and equitable" in section 1129(b) means that the Plan provides that
28 each holder of a Claim of such class receive or retain on account of such Claim property of a

1 value, as of the effective date of the Plan, equal to the allowed amount of such Claim, or that
2 the holder of any Claim or interest that is junior to the Claims of such class will not receive
3 or retain any property under the Plan on account of such junior Claim or interest. Section
4 1129(b) is a relatively flexible, yet very complex provision, and this summary is not
5 intended to be a complete statement of the law. You should consult your own legal counsel
6 for a full understanding of your rights and the Debtor's powers under that section.

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

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

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

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

24 In addition to the foregoing, the provisions of the Bankruptcy Code vest the
25 Bankruptcy Court with substantial power and discretion to effectively modify (in ways
26 which may be favorable or unfavorable) the rights and benefits which various parties may
27 receive under the Plan by superimposing various conditions or other requirements as part of
28 its Order of Confirmation. No prior notice of any provisions that the Court may insert in its

1 Order of Confirmation will be given to any party-in-interest except to the extent that such
2 intentions are disclosed in open session of the Bankruptcy Court. Here again, your failure to
3 attend any session of the Confirmation Hearing might mean you will not have the
4 opportunity to object to or otherwise be heard as to potential amendatory provisions to the
5 Plan (if any) which the Court decides to insert in its Order of Confirmation.

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

10 **VII. TAX CONSEQUENCES**

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

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

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

20 March 17, 2017

VANDERHOFF LAW GROUP

/s/ Alan Vanderhoff

21 By: _____

22 Alan Vanderhoff

23 Attorneys for Pacific Imperial Railroad, Inc.
24
25
26
27
28

In re Pacific Imperial Railroad, Inc.
Case No. 16-06253-LT11

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 March 17, 2017, I served the following document(s):

Statement Re Amendments to Plan and Disclosure Statement

Redlined Version of Debtor's First Amended Plan of Reorganization Dated March 17, 2017

Redlined Version of [Proposed] Disclosure Statement to Debtor's First Amended Plan of Reorganization Dated March 17, 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
- Jess R. Bressi jess.bressi@dentons.com, kimberly.sigismondo@dentons.com
- Judith A. Descalso jad@jdescalso.com
- Joseph R. Dunn jrdunn@mintz.com,
tlmayo@mintz.com;aobrient@mintz.com;dsjohnson@mintz.com;docketing@mintz.com
- Michael A. Gardiner mgardiner@gardinerlegal.com, ctally@gardinerlegal.com
- Christopher V. Hawkins hawkins@sullivanhill.com,
hill@sullivanhill.com;millerick@sullivanhill.com;bkstaff@sullivanhill.com;vidovich@ecf.inforuptcy.com;hawkins@ecf.inforuptcy.com
- James P. Hill Hill@sullivanhill.com,
hawkins@sullivanhill.com;bkstaff@sullivanhill.com;vidovich@ecf.inforuptcy.com;hill@ecf.inforuptcy.com;millerick@sullivanhill.com
- Joseph M. Hoats josephhoats@hotmail.com
- Mark A. Maasch m-law@cox.net
- Kristin Mihelic Kristin.T.Mihelic@usdoj.gov, tiffany.l.carroll@usdoj.gov
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- Fletcher W. Paddison fletcherpaddison@outlook.com
- Stewart J Powell stewart@yplawfirm.net
- Donald Stoecklein djs@prologicanalytics.net
- 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 March 17, 2017, in San Diego, California.

/s/ Alan Vanderhoff

Alan Vanderhoff