

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE
WBY, INC. d/b/a FOLLIES,
Debtor

CHAPTER 11
CASE NO. 16-52291-JRS
JUDGE SACCA

DEBTOR'S DISCLOSURE STATEMENT

I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the small business Chapter 11 case of WBY, INC. d/b/a Follies ("Debtor"). Debtor commenced this case on February 5, 2016 by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §1101 et seq. (the "Bankruptcy Code"). This Disclosure Statement contains information about Debtor and describes the Chapter 11 Plan of Reorganization (the "Plan") filed by Debtor. *A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

A. PURPOSE OF THIS DOCUMENT

This Disclosure Statement describes:

1. Debtor and significant events during the bankruptcy case;
2. How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed);

3. Who can vote on or object to the Plan;
4. What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan;
5. Why Debtor believes the Plan is feasible and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation; and
6. The effect of confirmation of the Plan and the general provisions of the Plan.

Be sure to read the Plan as well as this Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will establish your rights.

B. DEADLINES FOR VOTING AND OBJECTING, DATE OF PLAN CONFIRMATION HEARING

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed. The Court has conditionally approved this Disclosure Statement, subject to the final approval after notice and hearing as set forth below, and has determined that the Plan itself provides adequate information, so that a separate disclosure statement is not necessary.

1. Time and Place of the Hearing for Final Approval This Disclosure Statement and to Confirm the Plan

The hearing at which the Court will determine whether to grant final approve this Disclosure Statement and confirm the Plan will take place on _____, 2016 at _____ p.m. in Courtroom 1404, at the United States Courthouse, 75 Ted Turner Dr. SW, Atlanta, Georgia 30303

2. *Deadline to Vote on Accepting or Rejecting the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to:

Clerk U.S. Bankruptcy Court
1340 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, Georgia 30303

With a copy to:

Danowitz & Associates, P.C.
300 Galleria Parkway NW
Suite 960
Atlanta, Georgia 30339

See Section V., below for a discussion of voting eligibility requirements.

Your ballot must be received by _____, 2016 or it will not be counted.

3. *Deadline to Object to the Disclosure Statement and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed in writing with the Clerk of the Court and served upon counsel for Debtor by _____, 2016. If you file a written response, you must attach a certificate stating when, how, and on whom you served your response. The Address for the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW Atlanta, Georgia 30303. You must also mail a copy of your response to the Danowitz & Associates, P.C., 300 Galleria Parkway NW, Suite 960, Atlanta, GA 30339.

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

If you want additional information about the Plan, you should contact Danowitz & Associates P.C., 300 Galleria Parkway, NW Suite 960, Atlanta, Georgia 30339.

C. DISCLAIMER

The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment

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

II. BACKGROUND

A. DESCRIPTION AND HISTORY OF DEBTOR'S BUSINESS

Incorporated on January 29, 1991, WBY, Inc. d/b/a Follies is located at 4075 Buford Highway, Atlanta, in DeKalb County, Georgia and licensed by the City of Chamblee as a bar and restaurant with adult entertainment. In addition to food and beverages, Debtor provides the adult entertainment of nude dancing by professional female entertainers. Debtor is owned equally by two of its original founders, Steven M. Youngelson and Surrey R. White. Follies is open seven days a week and operates daily from noon to 3 a.m.

B. MANAGEMENT OF DEBTOR BEFORE AND DURING THE BANKRUPTCY

Steve Youngelson and Surrey White are the only shareholders and officers of Debtor. Having founded and built the business of Debtor, they continue in active oversight of the operations, financial matters, legal affairs and the general business of Follies. The hands-on daily management of Debtor is the responsibility of Day Manager Steve Shine and Night Manager Edward "Cain" Allen.

C. INSIDERS OF DEBTOR

Insiders are defined by Section 101(31) of the Bankruptcy Code and include officers, directors, persons in charge of Debtor, as well as relatives of officers, directors, or persons in charge of Debtor. Steve Youngelson is a 50% shareholder, CFO and Secretary of Debtor.

Youngelson, a Georgia lawyer, is responsible for the financial policies of Debtor, involved in the development and implementation of major policy decisions and also in the selection and supervision of management of daily operations. Given his legal education and experience, Mr. Youngelson also acts on Debtor's behalf as liaison with political entities such the City of Chamblee, the Chamblee police department, DeKalb County, and with outside counsel on legal matters. Surrey R. White is 50% owner of Debtor and is its CEO and President. Mr. White is responsible for selecting and supervising management of daily operations and for providing operational insight and direction on major policy decisions for Debtor. Mr. White has been active in restaurant and entertainment businesses as an owner/operator for decades with other business entities in Metro Atlanta. Mr. White and Mr. Youngelson operate as a team in their management of Debtor keeping each other closely advised on matters affecting Debtor. When this case commenced, Mr. Youngelson and Mr. White were being paid weekly salaries of \$25,000.00. At the urging of the United States Trustee's office, they agreed to reduce their annual salary to \$76,000.00; an amount which had already been paid out for the calendar year 2016. After months of receiving no salary and no distributions, and after conferring with Tom Dworschak on behalf of the U.S. Trustee, Messrs White and Youngelson adjusted their weekly salaries to \$12,500.00 beginning in August 2016.

Relatives of officers and directors are also insiders under the Bankruptcy Code. The following adult children of Debtor's owners are paid employees of Debtor in the capacities listed below, each receiving a weekly salary of \$700.00:

Surrey R. White Jr. has an interest in, and manages, the outside security company used by Debtor.

Stephanie R. White is a registered nurse and consults with Debtor on health issues confronting workers and security.

Brett R Youngelson is an officer and manages Valet for Life II, Inc., the valet service used by Debtor.

Lindsey Youngelson is public relations manager for Valet for Life II, Inc.

D. DEBTOR'S BUSINESS MODEL

Debtor employs bartenders, bar backs, a chef and kitchen staff, House Moms, an accountant, front door admissions personnel. As of August 2016 there were approximately 55 employees. The valet service and the security service are separate business entities and are contracted by Debtor to provide valet and security services to the patrons, employees, and entertainers at Follies. Because of the small size of the security and valet companies, Debtor pays the salaries of their management.

Follies does not accept credit cards and operates strictly on a cash basis. There are ATMs inside Follies which Debtor stocks and which generate transaction fees for Debtor.

Debtor does not charge patrons a cover during the day. Patrons are charged an entry fee after 7 p.m. on week days and after 5 p.m. on weekends. Follies offers customers a daily lunch buffet and a full dinner buffet in the late afternoon/evening prepared by the Follies' chef who formerly was Whitney Houston's personal chef.

All entertainers at Follies and the Disc Jockeys ("DJ") are engaged as independent contractors who work only for tips¹. Entertainers who perform at Follies are asked to sign an Entertainer Contract in which they agree that they are independent contractors and not employees. The DJ provides his own sound equipment and music, and the entertainers provide their own costumes. The DJs play music requested by the entertainers while they dance.

¹ The legal status of entertainers has been challenged and is the subject of pending litigation, but the agreement signed by the entertainers designates their status as independent contractors, and Debtor has classified them as such. The City of Chamblee and DeKalb County also classify the entertainers as independent contractors.

Entertainers change their clothes in a dressing room, and store their belongings in lockers rented from Debtor. Entertainers pay the House Mom a House Fee, or Locker Fee, per shift worked. The House Fee/Locker Fee varies depending on the shifts worked. The House Moms offer the entertainers make-up, wipes, mouthwash and other sundries and provide drink tickets the entertainers can pass on to patrons or use for themselves.

By law, the entertainers are required to have a DeKalb County work permit to perform. Entertainers must present these permits in order to perform at Follies. Entertainers may take their permits and perform at other clubs if they wish to do so. Follies posts a sign informing entertainers that they “may pick up their permit and work at another club anytime [they] wish.”² There are also signs informing entertainers and employees of Follies’ policy of “Zero tolerance for any entertainer caught participating in illegal drug activity”.

Customers are charged for lap dances and for use of VIP rooms. These fees, as well as tips from customers, go directly to the entertainers as compensation. Follies suggests entertainers follow industry tipping customs by tipping the DJ, the bartender, the House Mom and security. Entertainers who use the valet service to park their cars are charged the same fee as customers for this service. Before leaving Follies, entertainers are to pick up a “See Ya” Pass from the House Mom or from staff working the front door. Entertainers who are driving must also take a breathalyzer test. If they pass the breathalyzer test, they are escorted to their car by security. If they fail, they must arrange for a ride.

E. EVENTS LEADING TO CHAPTER 11 FILING

At the time of the commencement of the Case, Debtor was defending law suits brought - under the Fair Labor Standards Act (“FLSA”) by current and former entertainers claiming status

²Follies policy, and the practice at the club, is that the entertainers may work at any club they wish at any time and then return to work at Follies if they wish to do so.

as employees and seeking back pay for minimum wages. One of these law suits was by an individual entertainer Brezzy Hurst and the other law suit was conditionally certified by the United States District Court in the Northern District of Georgia as a collective action with more than seventy plaintiffs (the “Collective Action”).³ Millions of dollars in damages were claimed. In addition to the damages demanded by the plaintiffs, Debtor was exposed to liability for the payment of arbitration fees. Many of the plaintiffs had signed arbitration agreements with Debtor requiring arbitration of any disputes with the American Arbitration Association (“AAA”) and which required Debtor to pay all costs of arbitration. Fees for arbitration with AAA begin at \$19,000.00. Debtor was faced with arbitration fees of more than a million dollars in addition to potential liability for compensatory damages if the plaintiffs prevail on their FLSA claims. The disruption resulting from approximately 70 separate arbitrations and multiple law suits would have caused officers, managers, and employees to divert their energies from operating a successful business and would have been highly disruptive to ordinary business operations of Follies and was factored into the decision to file. The decision was made to seek bankruptcy protections, and Debtor filed this Chapter 11 Case on February 5, 2016.

F. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE

1. Restructuring of Business

Debtor has operated its business profitably during this Case, with deposits accruing in Debtor-in- Possession bank account. In the months since the Petition Date, Follies has had an

³ Brezzy Hurst v. Steve Youngelson, WBY, Inc. Steve Shine and John Doe known as Cane, U.S. DCt NDGA Atlanta Division Civil Action File No. 1:15-CV-13560-CAP (“Hurst Action”) (case still pending); Tiara Payne and Tashia Anderson have filed arbitration actions against Debtor; Kristin Journigan et al v. WBY, Inc., U.S. DCt NDGA Atlanta Division Civil Action File No. 1:14-CV-913-SCJ (“Collective Action”)(case still pending); Hart v. WBY, Inc. U.S. D.C. NDGA Atlanta Division Civil Action File No. 1:15-CV-00067-AT (case now dismissed).

increase in customers, particularly on weekends. This increase in customers may be the result neighboring cities having enacted ordinances and rules making it difficult for adult entertainment establishments to continue operating, and the fact that more than 100 entertainers choose to perform at Follies daily. The increased customer base has resulted in increased revenue compared to the same period last year. Income during this Case has also been enhanced in part by the fact that neither owner received any compensation or distribution for months pursuant to an agreement with the U.S. Trustee's Office.

2. Debt Secured by Real Property

Debtor owned no real property at the commencement of this case and has not acquired any real property during the pendency of this Chapter 11 case.

3. Debt Secured By Personalty

There were no known creditors of Debtor having a valid and perfected security interest in any property of Debtor at the time of commencement of this Chapter 11 case, and there have been no pledges of collateral to any creditor during this Case.

4. Professionals Approved by the Court

Bankruptcy Counsel. Debtor applied to hire Danowitz & Associates, P.C. as Counsel in this Chapter 11 Case [Doc. No. 4] on February 5, 2016, and was approved by the Court on February 29, 2016 [Doc. No. 12]. Danowitz & Associates, P.C. submitted its *First Interim Application for Compensation and Reimbursement of Expenses* [Doc. No. 91] on June 6, 2016 which was approved by the Court for fees and reimbursement of expense of \$64,048.74. [Doc. No. 105]. Danowitz & Associates submitted its *Second Interim Application for Compensation and Expenses* [Doc. No. 138] on October 20 ,2016, requesting \$44,364.31 in compensation and reimbursement of expenses.

Labor Lawyer. Debtor applied on February 5, 2016 to hire Constangy, Brooks, Smith & Prophete, LLP (“the Constangy Law Firm”) as its labor lawyers to handle Fair Labor Standard Act matters and other related issues. [Doc. No. 5], and was approved by the Court on March 1, 2016 [Doc. No. 16]. The Constangy Law Firm submitted its *First Interim Application for Compensation and Reimbursement of Expenses* on June 6, 2016 [Doc. No. 92] and was approved for payment of fees and expenses of \$19,682.90[Doc. No. 106]. On October 20 2016 the *Second Interim Application for Compensation and Expenses By Debtor’s Labor Lawyers* was filed for the Constangy Law Firm requesting [Doc. No. 139] requesting \$64,623.60 in compensation and reimbursement of expenses.

Special Litigation Counsel. On August 31, 2016 Debtor submitted its *Application to Employ Special Litigation Counsel* [Doc. No. 125] to retain counsel to represent it in a civil action pending in the U.S. District Court for the Northern District of Georgia, *WBY, Inc., Steve Youngelson and Joshua Schindler v. DeKalb County, etc.*, Civil Action No14-CV-00253-LLM (“the Civil Action”) for warrantless search and seizure among other acts. This Application was approved by an order of the Court on September 6, 2016 [Doc. No. 126]. No compensation has yet been requested by special litigation counsel.

5. Other Significant Events

Debtor has complied with the reporting requirements of the Code and of the United States Trustee during the pendency of this case and has filed all required monthly operating reports with the Court.

Debtor requested, and the Court entered an order on March 7, 2016, setting a bar date of May 2, 2016 for filing claims in this Case [Doc. No. 22]. After being notified of additional FLSA claims by former entertainers who were not aware of the Chapter 11 Case, Debtor first consented to the filing of late claims by eight (8) otherwise previously unknown creditors on

May 25, 2016 [Doc. No. 79] and again to the filing of late claims by nine additional unknown creditors on June 8, 2016 [Doc. No. 93]. In order to ensure that all possible creditors received notice and an opportunity to file claims in this Case, Debtor filed a *Motion to Publish Notice to Unknown Creditors by Publication and for Limited Extension of Bar Date to File Claims* on June 28, 2016 [Doc. No.102]. The Court entered an order approving this Motion and extending the Bar Date to creditors who had no prior notice of the bankruptcy filing to September 16, 2016 [Doc. No.113]. Notice of the bankruptcy and the last date to file claims was published by Debtor nationwide in *USA Today* on-line from July 22-August 5, 2016 and in print on July 26, 2016, published for metro-Atlanta circulation in the *Atlanta Journal Constitution* on-line and in print on July 29, 2016 and for local publication in DeKalb County official legal organ, the *Champion Newspaper*, on July 28, 2016.

Debtor and Claimants Tashia Anderson, Tiara Payne, Kristin Journigan and 73 plaintiff members of the conditionally certified Collective Action entered into a Settlement Agreement and Compromise of Claims Agreement (“Settlement Agreement”) which was approved by the Court on October 7, 2016 [Doc. No 135]. Under the terms of this Settlement Agreement, the claims of Ms. Anderson, Ms. Payne and Ms. Journigan plus the claims of the plaintiff members of the conditionally certified Collective Action who “opt-in” to the Settlement Agreement by timely submitting a release and IRS form W-9 to their attorneys (“Opt-In Claimants”) are considered allowed FLSA claims as filed and will be paid as members of Class D under the Plan. (See Section III D).

On October 7, 2016 the Court entered an order granting relief from the stay to entertainers who were not part of the conditional collective action but who filed claims in the Case (the “Non-Collective Claimants”) [Doc. No. 134]. Pursuant the that Order, representative

for the Non-Collective Claimants are permitted to file a civil action in United States District Court for the Northern District of Georgia in order to determine if the Claimants were employees of Debtor and, if so, whether Debtor violated FLSA by failing to compensate the claimants with wages at the minimum and overtime rates.

A summary of timely filed claims is attached as **Exhibit “C”**. The amount of allowed claims could change upon amendments to existing claims or as a result of objections filed by Debtor and subsequent rulings thereto by the Court.

G. PROJECTED RECOVERY OF AVOIDABLE TRANSFERS Debtor has the authority to seek the recovery of preferential transfers under Section 547 of the Bankruptcy Code, fraudulent transfers under Section 548 of the Bankruptcy Code, and post-petition transfers under Section 549 of the Bankruptcy Code.

Debtor is unaware of any avoidable transactions under Sections 548 or 549 of the Bankruptcy Code. Debtor may have the right to seek the avoidance of certain payments to insiders for up to a year before the commencement of this Case. Each of the principals of Debtor received salary and compensation exceeding a million dollars in 2015. Debtor has elected not to seek avoidance of these payments for a number of reasons, but primarily as a result of Debtor’s Plan which proposes to pay allowed general unsecured claims either (1) in full or (2) an amount agreed upon by the Claimants in the Plan.⁴

H. CLAIM OBJECTIONS

After the September 16, 2016 extended bar date for filing claims, Debtor and counsel reviewed the timely filed claims. Debtor anticipates the filing of objections to a number of

⁴ Dicta in *In re: Erin Food Services, Inc.*, 980 F.2d 792,802 n29 (1st Cir., 1992) supports the proposition that when unsecured claims are paid in full, the Trustee has no right to avoid a preferential transfers. See, also, *In re Cavalier Homes of Georgia*, 102 BR 878, 888 (Bankr. M.D. Ga. 1989)

claims, and expressly reserves the right to object to claims. Any claim objections will be filed the later of (1) the Effective Date of the Plan, or (2) within 14 days after any amendment to a timely filed claim, or (3) within 14 days after the filing of a tardy claim. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is filed and sustained.

I. CURRENT AND HISTORICAL FINANCIAL CONDITIONS

During the year 2014, WBY, Inc. had gross revenues of \$8,206,877.00 and income (profit) of \$3,580,305.00.

During the year 2015, WBY, Inc. had gross revenues of \$8,506,323.00 and income (profit) of \$3,126,817.00.

During the seven months of reporting in this Case, Debtor has average monthly revenue of \$754,690.94 and average monthly income of \$180,564.56. The following is a summary in revenue, expenses and income during this Case:

Period	Revenue	Expenses	Income
February, 2016	\$724,043.00	\$546,623.00	\$176,420.00
March, 2016	\$741,265.00	\$655,935.00	\$85,330.00
April, 2016	\$744,500.00	\$596,490.00	\$148,010.00
May, 2016	\$814,051.00	\$843,677.00	\$29,626.00
June, 2016	\$728,744.36	\$386,209.70	\$342,534.66
July, 2016	\$817,457.20	\$462,559.92	\$354,867.28
August 2016	\$712,776.00	\$585,738.00	\$127,038.00
Total	\$5,282,836.56	\$4,077,232.62	\$1,263,825.94
Monthly Average	\$754,690.94	\$582,461.80	\$180,546.56

The full Monthly Operating Reports are available through PACER or may be obtained by making a written request to the counsel for Debtor: Danowitz & Associates, P.C., 300 Galleria Parkway, Suite 960, Atlanta, Georgia 30339 or via e-mail at Information@DanowitzLegal.com

Debtor has paid quarterly U.S. Trustee fees of \$9,750.00 during this Case and also has incurred professional fees, such as fees and expenses for Debtor's bankruptcy counsel and for Debtor's labor lawyers. While Debtor will continue to incur professional fees after confirmation, they are projected to be less than the fees incurred during the reorganization process. After the Case is closed, Debtor will be excused from paying U.S. Trustee fees, and it is Debtor's intention to timely file a report of substantial consummation and request the entry of an order closing the class upon Debtor's fulfillment of the requirements for substantial consummation set forth in §1101(2).⁵

III. SUMMARY OF THE PLAN OF REORGANIZATION AND

A. WHAT IS THE PURPOSE OF THE PLAN OF REORGANIZATION?

The Plan places claims and equity interests in various classes and describes the treatment each class will receive. The claims grouped in a specific class must be substantially similar to each other. The Plan also states whether each class of claims or equity interests is impaired or unimpaired.⁶ Only claims which are impaired may vote on the Plan. If the Plan is confirmed, your recovery will be governed by the amount and payment terms as provided by the Plan.

⁵ Upon a case being fully administered under Federal Rule of Bankruptcy Procedure 3022 and 11 U.S.C. §305 and there being substantial consummation under §1101(2) the case may be closed provided the plan provides a mechanism, as this Plan does, to pay claims once they are allowed. Such a plan is fully administered even though there are contested matters that are not resolved prior to the request for closure. See, *In re Valence Tech, Inc.* 2014 Bankr LEXIS 4429 (Bankr WD Tx 2014).

⁶ The terms "impaired" and "unimpaired" are defined in 1.18 and 1.27, respectively on the DEFINITIONS attached hereto as **Exhibit B**.

B. TREATMENT OF CLAIMS AND EQUITY INTERESTS

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired (“unimpaired”), and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code.

1. UNCLASSIFIED CLAIMS

Administrative expenses are costs or expenses of administering Debtor’s Chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. Holders of administrative claims must file their claims within 60 days after the Effective Date of the Plan. Debtor will pay all administrative claims on the Effective Date of the Plan, as required by the Bankruptcy Code, unless a particular claimant agrees to a different treatment. Anticipated administrative expenses include professionals approved in this Case, unpaid U.S. Trustee fees, and any post-petition claims filed by claimants and allowed by the Court. Any allowed administrative claims filed after the Effective Date will be paid within sixty (60) days of submission, or of approval by the Court if required.

2. CLAIMS PLACED IN CLASSES

Class A: Priority Tax Claims (Unimpaired): Priority tax claims are unsecured claims by governmental entities for income, employment, and other taxes described by § 507(a)(8) of the Bankruptcy Code. Priority tax claims will be paid in full, in cash, on the Effective Date of the Plan. CLASS A CLAIMANTS ARE UNIMPAIRED.

Class B: Allowed General Unsecured Claims (Unimpaired): Allowed General Unsecured Claims will be paid the full amount of their claim on the Effective Date.

CLASS B CLAIMANTS ARE UNIMPAIRED.

Class C: Allowed Claims of Disputed and Unliquidated Fair Labor Standards Act Claimants. (Unimpaired): All of the claims in this class are disputed and unliquidated. If there is a final judicial determination that the claimants are, or were, employees of Debtor the claims will become allowed claims, but unliquidated. The Bankruptcy Court will have exclusive jurisdiction to liquidate these claims. Claims in this class that are both allowed and liquidated will be paid in full after claimants timely provide the Reorganized Debtor with a properly completed IRS Form W-4. Claimants in Class C may elect to become Class D claimants and be paid the amount of their filed claim as of September 16, 2016 according to the terms and conditions of payment to allowed Class D Claims. CLASS C CLAIMS ARE UNIMPAIRED.

Class D: Allowed Claims of Opt-In Fair Labor Standard Act Claimants (Impaired):

Claimants in this Class will be paid Ten Percent (10%) of their allowed claims. Debtor will disburse not less than of \$500,000.00 on the Effective Date to allowed Claimants in this Class, and will disburse not less than \$100,000.00 per month pro-rata to all allowed Claimants in the Class until each allowed Claimant in this Class has been paid ten percent (10%) of their allowed claim. In order to receive disbursements, Claimants in this class must timely submit a completed IRS form W-9 Request For Taxpayer Identification Number and Certification . The Settlement Agreement Opt-In Claimants will all have allowed claims and will be paid in the manner and amount set forth above. CLAIMANTS IN CLASS D ARE IMPAIRED.

Class E: Equity Interests (Impaired). The equity interest holders will retain their equity interests in the Reorganized Debtor. Equity interests who are officers and employees, will

continue to receive salaries of \$12,500.00 per week, provided there are adequate deposits to do so after funding the Plan at the rate of \$100,000 per month. CLAIMANTS/EQUITY INTEREST HOLDERS IN CLASS E ARE UNIMPAIRED.

3. DEFINITIONS

The definitions and rules of construction set forth in §§101 and 102 of the Code will apply when terms defined or construed in the Code are used in this Disclosure Statement and Plan as hereinafter defined. These definitions are supplemented by the definitions listed in the DEFINITIONS attached hereto as **Exhibit B**.

4. ALLOWANCE AND DISALLOWANCE OF CLAIMS

a. Disputed Claims. A disputed claim is a claim that has not been allowed or is disallowed by a final non-appealable order, and as to which either (i) a proof of claim has been filed or deemed filed, and Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and Debtor has scheduled such claim as disputed, contingent, or unliquidated. Any claim objection will be filed the later of (1) the Effective Date of the Plan, or (2) within 14 days after any amendment to a timely filed claim, or (3) within 14 days after the filing of a tardy claim.

b. Payment of Disputed Claims. No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order and liquidated damages have been determined by the Court. Debtor has the power and authority to settle and compromise a disputed claim with Court approval and in compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

c. Reserve for Disputed Claims. If there are claims for which an objection has been filed on or before the Effective Date and which have not been resolved by withdrawal of the

claim or by entry of an order determining the validity and amount of the claim, the Reorganized Debtor will establish a reserve fund to pay the claims according to their classification in this Plan if the claims are subsequently allowed and liquidated by order of the Court.

d. Payment of Resolved Claims. If a claim is not paid according to the terms of the class within which such claim is classified as a result of a pending objection to such claim and the claim is later deemed to be an allowed claim by a final non-appealable order of the Court, such claim will be paid the full amount that it is entitled to be paid under the Plan within 30 days after the entry of a final order approving such claim. If the resolved claim cannot be paid in full within 30 days after the entry of a final order approving the claim, the outstanding balance of the claim will accrue interest at the statutory rate of interest for judgments in the District Court, pursuant to 28 U.S.C. §1961. The current statutory rate as of 10/14/16 is .66%.

e. Amendments to Claims. A claim may not be amended later than the Confirmation Date, except for amendments to Proofs of Claim to decrease the amount or the priority thereof.

C. PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. ASSUMPTION OF UNEXPIRED LEASE. Debtor currently leases its principal place of business. The master lease is between Gary Evans (now the estate of Gary Evans, deceased) as the landlord, and Steve Youngelson and Surrey White as tenants. Messrs. Youngelson and White, in turn, lease by oral agreement the principal place of business to Debtor, and Debtor pays all obligations arising from the master lease. Debtor also has a lease with Public Storage for the rental of a storage unit where it keeps old but usable club furniture such as tables and chairs. These leases are deemed to be assumed by the entry of a final order confirming the Plan and the Reorganized Debtor will continue to make contractual lease payments on both leases as they become due.

2. REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

No unexpired leases or executory contracts are known, other than that lease described in the preceding paragraph C1. To the extent there are other unexpired leases or executory contracts, such unexpired leases or executory contracts will be deemed rejected by the entry of a final order confirming the Plan.

IV. MEANS OF IMPLEMENTING THE PLAN

A. FUNDING PLAN AND REORGANIZED DEBTOR MANAGEMENT.

The Plan will be funded by profits earned during this Case and from earnings in the ordinary course of business of the Reorganized Debtor. Post confirmation management of Debtor will remain the same as current management and compensation of such management will remain the same as currently established until the Plan has been fully funded. A more detailed description of the funding is found in the section VII, "Feasibility of Plan", below.

B. RISK FACTORS. As always, there is a risk that market factors will result in a decrease in revenues. The current high revenues of Debtor are a factor of its current increased popularity with both entertainers and customers. Although this popularity could wane somewhat, Debtor has been a major player in the adult entertainment industry in the Atlanta, GA market for a number of years and anticipates no significant change in its ability to attract the volume of customers necessary to generate the revenues to fund the Plan. There is also a risk that the state laws, county ordinances, or municipal ordinances may change and render Debtor's business less tenable.

C. PENDING LITIGATION INVOLVING DEBTOR

There were two significant FLSA lawsuits pending against Debtor when this Case commenced. A third civil lawsuit for damages under FLSA may be filed against Debtor by

Non-Collective Claimants prior to Confirmation (see Section II F.5., above). The Hurst Action, the Collective Action, and the newest action allege that the plaintiffs were employees of Debtor and entitled to payment of back wages and damages during such time of employment.

Additionally, there was pending arbitration actions by Ms. Payne and Ms. Anderson seeking the same redress. Under the terms of the Settlement Agreement, Ms. Payne and Ms. Anderson will drop their arbitration demands and the FLSA claims of Ms. Journigan and the Opt-In Claimants will be dismissed with prejudice in the Collective Action and the Collective Action claims of the plaintiffs who are not Opt-In Claimants (“Non Opt-In Claimants”) will be dismissed without prejudice. Any remaining bankruptcy claims of Non Opt-In Claimants will be paid as Class C claimants and their claims will be discharged under the confirmed Plan.

D. TAX CONSEQUENCES OF PLAN

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

The following are anticipated tax consequences of the Plan: (1) The Reorganized Debtor will have tax consequences as a result of payments to creditors under the Plan; and (2) There may be tax consequences to any claimant receiving payment under the Plan; (3) Payments to members of Class D under the Plan will be reported to the IRS as income (4) payments to Class C members will be reported to the IRS as wages. Distribution will be made to individual Class C & Class D claimants when Debtor has received a correctly completed IRS form W-4 or IRS form W-9, respectively, from a claimant.

V. CONFIRMATION REQUIREMENT AND PROCEDURES

A. GENERAL REQUIREMENTS FOR CONFIRMATION

To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of the

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

Confirmation of Chapter 11 plans is also guided by a concept referred to as the “absolute priority rule”. Simply stated, the absolute priority rule provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property under a reorganization plan. *In re Lett*, 632 F. 3d 1216 (11th Cir. 2011). The absolute priority rule applies only when there is a dissenting class, and no dissenting class is anticipated to Debtor’s Plan.

Debtor is soliciting acceptance of the Plan by all Impaired Classes of Claims in the Plan. The Plan can be confirmed by the Court if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each impaired class of claims voting on the Plan, and if it is accepted by the holders of two-thirds in amount of interests in each impaired class of equity interests voting on the Plan. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds that it accords fair and equitable treatment to the class or classes, provided that the Plan will pay in full superior classes of creditors before inferior classes receive any distribution or retain interests. If the superior classes consent to less than full payment, the Plan may be confirmed even if inferior classes receive distributions or retain interests.

B. THE CONFIRMATION HEARING

The Bankruptcy Court will hold a hearing on confirmation of the Plan. Any party in interest may object to confirmation. Objections to confirmation must be made in writing and filed with the Bankruptcy Court and must be served on counsel for Debtor before the date scheduled by the Court for the confirmation hearing. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

The Plan can be confirmed by the Court if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each impaired class of claims voting on the Plan, or if each impaired class of claims will receive or retain under the Plan property of a value that is not less than they would receive or retain if Debtor were liquidated under Chapter 7.

C. WHO MAY VOTE OR OBJECT TO CONFIRMATION

As stated above, any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. Many parties in interest are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired. Debtor is soliciting acceptance of the Plan by Impaired Classes of Claims under the Plan.

In this case, Debtor has determined Class D is impaired. Therefore, holder of claims in Class D are entitled to vote to accept or reject the Plan

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

Generally, a claim or equity interest is allowed if either (1) Debtor has scheduled the claim on Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or

unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

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

Bankruptcy Code §1124 provides that a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

D. WHO IS *NOT* ENTITLED TO VOTE

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

1. holders of claims and equity interests that have been disallowed by an order of the Court;
2. holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
3. holders of claims or equity interests in unimpaired classes;
4. holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
5. holders of claims for administrative expenses.

E. VOTES NECESSARY TO CONFIRM THE PLAN

If impaired classes exist the Court can confirm the Plan if (1) at least one impaired class of creditors has accepted the Plan without counting the votes of insiders within that class and (2)

all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes as discussed later in Section B.2.

1. Votes Necessary for a Class to Accept a Plan

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

A class of equity interests accepts the Plan if the holders of at least two-thirds in amount of the allowed equity interests in the class who vote, cast vote to accept the Plan.

2. Treatment of Non Accepting Classes

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

VI. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR

Confirmation of the Plan discharges Debtor from any debt that arose before the date of confirmation to the extent specified in §1141(d)(1)(A) of the Bankruptcy Code, except as provided in the Plan or under applicable bankruptcy law. However Debtor will not be discharged

of any debt (i) imposed by the Plan, (ii) of a kind specified in §1141(d)(6)(A) if a timely complaint was filed in accordance with Bankruptcy Rule 4007(c), or (iii) of a kind specified in §1141(d)(6)(B). After the Effective Date of the Plan, claims against Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

B. REVESTING PROPERTY OF THE ESTATE

Confirmation of the Plan vests all property of the estate in the Reorganized Debtor free and clear of claims and interests of creditors and equity security holders, unless otherwise provided in the Plan.

C. CO-DEBTOR STAY

Chapter 11 bankruptcy does not provide for a co-debtor stay. However, the court may issue any order that is necessary or appropriate to carry out the provisions of this title. In some instances FLSA claimants may assert claims against Debtor and against officers or managers of Debtor. Debtor's bylaws contain provisions that require WBY, Inc. to indemnify and hold harmless any officer, director, employee or agent of WBY, Inc. who is made a party to an action due to his position with WBY, Inc. If litigation is allowed to continue or commence against such individuals, resources and energies of officers, managers, and employees of the Reorganized Debtor will be diverted to defending such claims. Furthermore, Debtor's Plan will pay claimants (1) the full amount of their claims or (2) the full amount agreed to by way of compromise or settlement, therefore, the pursuit of claims against individuals who may have derivative liability to claimants is redundant.

In order to carry out the provisions of the Chapter 11 reorganization by the Reorganized Debtor, attempts to collect the same debt from co-obligors must be stayed. **Any act to collect all or any part of a debt that is to be paid under the Plan against an individual that is liable on**

such debt with Debtor, including but not limited to Surrey R. White, Steve Youngelson, Steven Shine, Edward “Cain” Allen, is to be stayed by the Confirmation of the Plan, and any creditor of Debtor is enjoined from attempting to collect all or any part of such debt from such individual unless and until the time of a default under the provisions of the Plan.

VII. LIQUIDATION ANALYSIS

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. The following gross proceeds could result from a liquidation of Debtor:

\$-00- value in real property.

\$9,300 value in furniture, fixtures and equipment

\$34,146 value in food and alcohol inventory

\$940,081 in cash and on deposit

\$2,000,000-\$3,000,000 potential recovery from preference litigation with insiders

If all assets were liquidated at fair market value, and if all preferences were successfully prosecuted and collected, there would be less than \$4,000,000 for payment of claims. Out of the liquidated estate, Chapter 11 administrative expenses and Chapter 7 administrative expenses would be paid in full before any distribution is made to unsecured creditors according to the priorities set out in Section 507 of the Bankruptcy Code.

Debtor’s Plan provides for the payment of approximately \$90,000 in general unsecured claims, nearly \$900,000 to the FLSA claims who settled, and up to an additional \$5,760, 297.00 to Class C FLSA claimants if such claims are allowed in the amounts filed.

Unsecured creditors will be paid the full amount of their claims, or the full amount agreed to in Debtor's Plan. Unsecured creditors would not be paid in full in a liquidating Chapter 7 case. Therefore, unsecured creditors will be paid at least as much under Debtor's Plan as they would receive if this case were liquidated under Chapter 7 of the Bankruptcy Code.

VIII. FEASIBILITY OF PLAN

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of Debtor or any successor to Debtor, unless such liquidation or reorganization is proposed in the Plan.

Debtor is projected to have approximately \$1,000,000 on deposit in its operating account on the Effective Date. This amount is adequate to make all payments that must be paid on the Effective Date. During this Case, Debtor has shown profits averaging more than \$100,000 per month, and the Reorganized Debtor will be depositing \$100,000 per month into a segregated account for the sole purpose of paying Class C claims, should they later become allowed claims. District Court litigation is expected to last many months, if not years, and there should be reserves in the millions of dollars to disburse if and when such claims become allowed claims. If there are inadequate funds on deposit to pay the claims in full, remaining claims will continue to receive disbursements of \$100,000 per month (pro-rata) with interest accruing on the unpaid claims at the statutory rate of interest for judgments in the District Court. With existing management continuing to run the business, and a proven business plan, it is highly probable that the Reorganized Debtor will generate cash flow adequate to fully fund the Plan.

IX. DEFAULT PROVISIONS

A. GENERAL DEFAULT PROVISIONS: In the event that Debtor defaults under the provisions of the Plan, any creditor or party-in-interest desiring to assert such a default shall

provide Debtor with written notice of the alleged default. Debtor will have 30 days from the receipt of the written notice in which to cure the default. If the default is not cured, any creditor or party-in-interest may thereafter file and serve upon counsel of Debtor a motion to compel compliance with applicable provisions of the Plan. The Court, upon finding of a material default, shall issue such orders compelling compliance with the pertinent provisions of the Plan or other such relief as determined by the Court. Notice must be provided in the manner set forth in section C, below

B. DEFAULT PROVISIONS FOR TAXES: The Reorganized Debtor is required to timely file all state and federal tax returns, and timely make all tax deposits and payments during the life of the Plan. Failure to adhere to any of the above requirements will be considered an event of default. Should an event of default occur, the taxing authority alleging default shall provide Debtor with written notice of any default under the Plan. If Debtor fails to cure any default within fifteen (15) calendar days following receipt of written notice of such default, then the entire tax debt still owed to the taxing authority shall become due and payable immediately, and the taxing authority may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code or state law.

C. NOTICE

Any notice to be given or other written matter to be delivered pursuant to this Plan may be given by way of certified mail, return receipt requested, statutory overnight delivery, or by first class United States Mail. Notice given by first class U.S. Mail shall be deemed received five (5) business days after placing such notice or written matter in the United States mail properly addressed to Debtor at the address listed below:

Surrey White
WBY, INC. d/b/a Follies
4075 Buford Highway
Atlanta, GA 30345

With a copy to:

Edward F. Danowitz, Esq.
Danowitz & Associates, PC
300 Galleria Parkway, Suite 960
Atlanta, GA 30339

X. GENERAL PROVISIONS

A. FURTHER ACTIONS

The Order of Confirmation shall operate as an order of the Court directing Debtor and any other necessary parties to execute and deliver or join in the execution and delivery of any instrument required to perform any act that is necessary for the consummation of this Plan pursuant to Bankruptcy Code §1142(b),

B. CAPTIONS

Section captions used in the Plan and this Disclosure Statement are for convenience only, and shall not affect the construction of the Plan.

C. BAR DATES FOR CLAIMS

(1) **Pre-petition claims**: The Court set a bar date of May 2, 2016 for creditors to file proofs of claim or interest for pre-petition claims. [Doc. No. 22] The Court later ordered the Publication of Notice to Unknown Creditors and Limited Extension of Bar Date to File Claims and extended the bar date for filing claims to September 16, 2016. [Doc. No 113]

(2) **Administrative Expenses**: Upon confirmation of this Plan, **any creditor or party-in-interest who may have a claim for an administrative expense pursuant to §503 of the Bankruptcy Code shall file an application with the court within 60 days from the Effective Date of the Plan** to determine whether such administrative expense shall be allowed in this case.

Any creditor or party-in-interest who fails to timely apply to the court for allowance of an administrative expense shall be barred from later submitting such claim and from receiving distributions for the payment of such claim under this Plan.

D. DISPUTED, UNLIQUIDATED AND CONTINGENT CLAIMS

Notwithstanding any other term or condition of this Plan, disputed, unliquidated and contingent Claims shall be paid only upon allowance in accordance with the provisions of the Plan and §502 of the Bankruptcy Code.

E. JURISDICTION OF THE BANKRUPTCY COURT

After the entry of the Order of Confirmation, the Court will retain jurisdiction for the following purposes:

- (1) To classify, allow or disallow Claims and adjudicate all controversies concerning the classification, allowance or liquidated amount of any Claim which a reauthorized to be brought.
- (2) To enforce performance of the Plan against the Reorganized Debtor, Claimants, or any other entity, and to interpret the provisions of the Plan, the Confirmation Order, or any order entered by the Bankruptcy Court in this Case.
- (3) To oversee and issue further appropriate orders respecting disbursement of amounts deposited as may be required by this Plan.
- (4) To conduct hearings on valuation, as necessary, and to determine whether any party-in-interest is entitled to recover against any Person any Claim, whether arising under §506(c) of the Bankruptcy Code, or otherwise.
- (5) To hear and determine all applications for compensation and other Administrative Expenses.
- (6) To hear and determine any and all pending adversary proceedings and contested

matters.

(7) To determine all causes of action which may exist in favor of Debtor and/or any of its creditors.

(8) To determine any modification of the Plan after confirmation pursuant to §1127 of the Bankruptcy Code.

(9) To determine all matters and controversies and disputes arising under or in connection with the Plan on the application, disposition or distribution of the Estate Property.

(10) To enter any order, including injunctions, necessary to establish and enforce the rights and powers of Debtor and/or any of its creditors under the confirmed Plan.

(11) To enter a final decree pursuant to Rule 3022 of the Bankruptcy Rules.

F. MODIFICATION OF THE PLAN

Debtor may amend or modify this Plan at any time prior to the entry of the Order of Confirmation, pursuant to §1127(a) of the Bankruptcy Code. After the entry of the Order of Confirmation, Debtor may, pursuant to §1127(b) and (c) of the Bankruptcy Code and with approval of the Court, modify and amend the Plan in a manner which does not materially or adversely affect the interests of Persons affected by the Plan without having to solicit acceptances of such modification, and may take such steps as are necessary to carry out the purpose and effect of the Plan as modified.

G. CLOSING THE CASE

Upon substantial consummation of this Plan, Debtor will move this Court to enter an order closing this Case. Upon the entry of such order, the Case shall be closed. Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan

Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case.

Alternatively, the Court may enter such a final decree on its own motion.

XI. CONCLUSION

Debtor believes that confirmation of this Plan of Reorganization is the most reasonable means for making a meaningful distribution to creditors of WBY, Inc. Debtor urges all claimants to vote for the acceptance of this Plan of Reorganization.

Counsel for Debtor-in-Possession,

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