

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re:	)	Chapter 11
	)	
EVERMILK LOGISTICS LLC	)	Case No. 17-03613-JJG-11
	)	
Debtor.	)	

**EVERMILK LOGISTICS, LLC'S DISCLOSURE STATEMENT**

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PROPOSED DISCLOSURE

ON \_\_\_\_\_, 2018 THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION (THE “BANKRUPTCY COURT”), APPROVED THIS DISCLOSURE STATEMENT (THIS “DISCLOSURE STATEMENT”). HOWEVER, THE BANKRUPTCY COURT'S APPROVAL DOES NOT CONSTITUTE A DETERMINATION OF THE MERITS OF THE ACCOMPANYING CHAPTER 11 PLAN (THE “PLAN”). THE BANKRUPTCY COURT HAS DETERMINED THAT THIS DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION TO ENABLE CREDITORS OF EVERMILK LOGISTICS LLC, AS DEBTOR AND DEBTOR-IN-POSSESSION (THE “DEBTOR”), TO MAKE AN INFORMED JUDGMENT IN EXERCISING RIGHTS TO VOTE UPON THE PLAN.

ONLY THIS DISCLOSURE STATEMENT IS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES FOR THE ACCEPTANCE OR REJECTION OF THE PLAN. NO REPRESENTATION CONCERNING THE DEBTOR, ITS BUSINESS OPERATIONS, OR THE VALUES OF ITS ASSETS IS AUTHORIZED BY THE BANKRUPTCY COURT, EXCEPT AS EXPLICITLY SET FORTH HEREIN OR IN ANY OTHER DOCUMENT APPROVED FOR DISTRIBUTION BY THE BANKRUPTCY COURT.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSIONER OF THE STATE OF INDIANA OR ANY OTHER STATE OR COMMONWEALTH. THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED HEREIN EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED BY THE DEBTOR FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. ALL CREDITORS AND OTHER INTERESTED PARTIES ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ CAREFULLY THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS, BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN.

## **I. INTRODUCTION**

Pursuant to section 1125 of the Bankruptcy Code, the Debtor provides this Disclosure Statement to known creditors to disclose information deemed by the Debtor to be material, important, and necessary for creditors to arrive at a reasonably informed decision in exercising their rights to vote for acceptance of the Plan. A copy of the Plan accompanies this Disclosure Statement. All capitalized terms used herein that are defined in Article I of the Plan shall have the meanings ascribed by the Plan unless the context in which such terms are used herein clearly dictate a different meaning.

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRATED PACKAGE AND BOTH SHOULD BE CONSIDERED TO PROVIDE ADEQUATE INFORMATION.**

**THE BANKRUPTCY COURT HAS SCHEDULED A HEARING ON ACCEPTANCE OF THE PLAN FOR \_\_\_\_\_, 2018 AT \_\_\_\_\_ (PREVAILING EASTERN TIME) IN ROOM 311, U.S. COURTHOUSE, 46 EAST OHIO STREET, INDIANAPOLIS, INDIANA 46204. CREDITORS MAY VOTE ON THE PLAN BY FILLING OUT AND MAILING THE ACCOMPANYING BALLOT AT A TIME AND IN A MANNER TO CAUSE THE COMPLETED BALLOT TO BE ACTUALLY RECEIVED BY COUNSEL FOR THE DEBTOR ON OR BEFORE \_\_\_\_\_, 2018.**

**NO REPRESENTATIONS CONCERNING THE DEBTOR (PARTICULARLY AS TO ITS FUTURE BUSINESS OPERATIONS OR VALUE OF PROPERTY) ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND CIRCUMSTANCES REGARDING ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO THE DEBTOR'S COUNSEL, WHO WILL INFORM THE BANKRUPTCY COURT.**

## **II. THE DEBTOR AND EVENTS LEADING TO THE CHAPTER 11 FILING**

The Debtor is organized as a commercial milk hauling trucking operation in East Central Indiana, located in Madison County in the community of Frankton, Indiana. The Debtor is a member-managed limited liability company, organized under the laws of the state of Indiana. The Debtor also provides dairy consulting services to commercial dairies. Teunis Jan Willemsen is the sole member and 100% owner of the Debtor.

The Debtor leases 12 trucks with General Trucking Leasing, LLC (“General Trucking”) and rents an additional seven trucks under month to month rentals with McCoy National Lease (“McCoy”). The Debtor also has capital leases for 27 trailers with Semo Tank/Baker Equipment (“Semo”).<sup>1</sup> The Debtor owns one trailer and one cattle truck. The Debtor owns no real property and currently occupies property that is in foreclosure. Debtor has permission to continue to occupy the property until the property is sold. Debtor will either enter into an arrangement with the new owners or move its operations. Moving the operations will not cause a disruption and Debtor has identified suitable property for re-locating should that become necessary.

The Debtor’s primary source of income is from hauling milk for Dairy Farmers of America, Inc. and six dairies. The Debtor also derives income from consulting services to commercial dairies. Prior to the filing the Debtor’s annual revenues total on average between \$5 and \$6 million.

The Debtor has no commercial bank loans. The Internal Revenue Service (“IRS”) and the Indiana Department of Revenue assert liens in Debtor’s assets for unpaid taxes and the actions of the IRS sending Notices of Levy to Debtor’s account debtors precipitated the chapter 11 filing.

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<sup>1</sup> The Debtor believes the trailers leased from Semo are capital financing leases. Semo may dispute this characterization.

The Debtor commenced this Chapter 11 Case on May 15, 2017 (the “Petition Date”), to allow it time to negotiate payment on its tax debt, restructure its operational debt and leases and continue as a valuable contributor to the local economy of East Central Indiana.

### **III. THE CHAPTER 11 CASE**

A. **Entry of “First Day” Orders** On the Petition Date, the Debtor filed two motions seeking entry of "First Day" orders intended to facilitate the Debtor's transition into chapter 11 by approving certain regular business conduct for which approval of the Bankruptcy Court is required. The first day hearings were held on May 18, 2017 and the final hearings on the first day motions were held on July 10, 2017.

The first day orders entered by the Bankruptcy Court consist of the following:

- authorization for payment of employees' prepetition wages and continued payment of employee obligations, payroll taxes, and insurance in the ordinary course of business (Docket No. 69); and
- authorization to use the Debtor's cash and cash equivalents (the “Cash Collateral”) in which the IRS asserts a prepetition perfected security interest to pay expenses arising in the ordinary course of the Debtor's business (Docket No. 70) (the “Cash Collateral Order”).

Pursuant to the Cash Collateral Order and negotiations between the Debtor and the IRS, the following conditions applied to the Debtor's use of the Cash Collateral: (a) the Debtor agreed to pay the IRS the sum of \$7,068.54 on the first day of each month as adequate protection, which payments shall be applied to reduce the taxes owed; (b) the Debtor granted replacement liens to the IRS in the Debtor's postpetition property to the extent that the Debtor's prepetition collateral subject to federal tax liens as of the commencement of the case is consumed or otherwise disposed of; (c) the Debtor keep current in deposit and payment of its postpetition tax liabilities as they become due; (d) the Debtor timely file all necessary postpetition federal tax returns; (e) the Debtor maintain in full force and effect insurance

coverage on the property subject to the Federal tax liens and designate the IRS as an additional insured on such policy; and (f) if the Debtor failed to comply with the conditions, the IRS may file a motion alleging default for the purpose of seeking relief from stay after notice to the Debtor and the Debtor's attorney. Subject to later objection and determination by the Court, the IRS was deemed to have a prepetition secured claim in the amount of \$383,815.03 for purposes of the Cash Collateral Order. The Debtor has complied with the requirements of the Cash Collateral Order.

**B. Additional Material Motions or Stipulations Filed in the Chapter 11 Case**

*1. Motion for Relief From the Automatic Stay to Exercise Right of Setoff Under § 553 Filed by Dairy Farmers of America, Inc.*

On June 12, 2017, Dairy Farmers of America, Inc. ("DFA") filed its Motion for Relief From the Automatic Stay to Exercise Right of Setoff Under § 553 (Docket No. 39) (the "DFA Motion for Stay Relief") seeking to exercise its setoff rights under section 553 as described below. The amount involved in the setoff was \$3,079.90. The Debtor did not object and the setoff was allowed to occur.

*2. Motion for Relief From Stay and Abandonment of Property Filed by West Coast Fund, LLC*

On June 21, 2017, West Coast Fund, LLC ("West Coast") filed its Motion for Relief From Automatic Stay and Abandonment of Property (Docket No. 49) ("WC Motion for Stay Relief") seeking to abandon the real property the Debtor occupies located at 5422 North State Road 9, Anderson, Indiana 46012 (the "Abandoned Property"). West Coast is the holder of a mortgage secured by the Abandoned Property (the "Mortgage"). The Debtor occupies the Abandoned Property, but holds no interest in the Abandoned Property. The Debtor did not object to the WC Motion for Stay Relief. On July 10, 2017, the Bankruptcy Court granted the WC Motion for Stay Relief (Docket No. 64). If the Abandoned Property is sold in a Sheriff's sale,

the Debtor intends to attempt to lease the Abandoned Property from the purchaser or to move from the Abandoned Property.

3. *Motion of Debtor for Authority to Enter into Insurance Premium Finance Agreement and to Provide Adequate Protection*

On June 21, 2017, the Debtor filed the Motion of Debtor for Authority to Enter into Insurance Premium Finance Agreement and to Provide Adequate Protection (Docket No. 53) (the “PFA Motion”) seeking authority to enter into the Commercial Premium Finance Agreement (the “Premium Finance Agreement”) with FIRST Insurance Funding Corp. (“FIFC”) for the financing of the Debtor’s insurance policies (the “Policies”) and for FIFC to be authorized and directed to take all actions necessary or appropriate to effect the Premium Finance Agreement. No objections to the PFA Motion were filed. On July 14, 2017, the Bankruptcy Court granted the PFA Motion (Docket No. 67).

C. **Retention of the Debtor's Professionals**

The Debtor filed a retention application for Faegre Baker Daniels LLP to represent and assist it in the administration of the Chapter 11 Case. The Court granted this application to retain Faegre Baker Daniels LLP as counsel for the Debtor on July 18, 2017 (Docket No. 71).

D. **Claims**

1. *Establishment of the Claims Bar Date*

On August 16, 2017, the Bankruptcy Court entered an order (the “Bar Date Order” (Docket No. 79) establishing (i) September 29, 2017, as deadline for filing proof of claims and equity interests against the Debtor that arose prior to the Petition Date, including claims arising from the rejection of an executory contract or expired lease and (ii) November 11, 2017, as the Governmental Bar Date. In addition, the Bar Date Order provided that, any creditor that was required to file, but failed to file a proof of claim for its Claim on or before the Claims Bar Date,

would be barred from asserting its claim against the Debtor and would not be permitted to vote on any plan of reorganization.

On August 18, 2017, the Bankruptcy Court also entered an order establishing September 29, 2017, as the §503(b)(9) claims bar date (the "§503(b)(9) Bar Date Order") (Docket No. 81). In addition, the §503(b)(9) Bar Date Order provided that, any creditor that was required to file, but failed to file a proof of claim for its Claim on or before the Claims Bar Date, would be barred from asserting its claim against the Debtor and would not be permitted to vote on any plan of reorganization.

## *2. Filing of Schedules and Statements*

On June 14, 2017, the Bankruptcy Court entered an order (Docket No. 45) granting the Debtor through and including June 23, 2017, to file its Schedules and Statements. On June 23, 2017, the Debtor timely filed its Schedules and Statements with the Bankruptcy Court (Docket Nos. 57, 58).

## *3. Meeting of Creditors*

The U.S. Trustee conducted a meeting of the Debtor's creditors in accordance with section 341 of the Bankruptcy Code (the "341 Meeting") on June 27, 2017 (Docket No. 61).

## **E. Exclusive Period for Filing a Plan and Soliciting Votes**

As extended by orders of the Bankruptcy Court, the Debtor has the exclusive right to file a plan through December 11, 2017, and solicit acceptances of such plan through February 9, 2018. This Disclosure Statement and accompanying Plan were timely filed within the exclusivity period.

F. **Causes of Action**

The Debtor is investigating Causes of Action that the Debtor or the Estate may hold against any Entity, including all Causes of Action against any Entity on account of indebtedness and any other Causes of Action in favor of the Reorganized Debtor or its Estate. The work is ongoing, and the Debtor and its Estate hereby reserve any and all rights that it may have to file Causes of Actions against any Entity, whether prior to or after the Effective Date. Unless specifically released in the Plan, all Causes of Action are expressly reserved and preserved under the Plan regardless of whether the existence of any particular Cause of Action is referenced or disclosed herein.

G. **Performance During Chapter 11**

Since the Petition Date, the Debtor has stabilized its business, remained current with its vendors, and been in negotiations with its lessors and with the IRS. The Debtor has also sought new capital investment and this Plan provides for new capital to the Debtor.

The Debtor has maintained all insurance and continues to enjoy the support of and ongoing business relationships with prepetition vendors and contract parties. This Chapter 11 Case has not disrupted the Debtor's business relationship with DFA, and DFA remains the Debtor's primary source of income. The Debtor currently employs 38 people for its operations in the normal course. The Debtor expects continued profitable performance through the balance of the Chapter 11 Case and after Confirmation as projected.

**IV. SUMMARY OF THE PLAN**

A copy of the Plan accompanies this Disclosure Statement. The Plan should be referred to for details concerning the treatment and classification of creditors and interest holders. The following summary is qualified in its entirety by the express provisions of the Plan.

The Plan provides for a capital investment of not less than \$100,000 into the Reorganized Debtor and in exchange the current ownership interests will be cancelled and new ownership interests issued to the Investor.

A. **Purpose of the Plan**

The purpose of the Plan is to allow the Debtor to continue in business under new ownership with a more stable business model that can be supported by cash flows from operations. The Debtor believes that the reorganization contemplated by the Plan is in the best interests of creditors as a whole. If the Plan is not confirmed, the Debtor believes that it will be forced to liquidate under chapter 7 of the Bankruptcy Code. In that event, it is likely that no claims will be paid and whatever value has been generated in the chapter 11 case will be spent litigating the characterization of leases and paying administrative costs of the chapter 7 case.

B. **Administrative Claims**

Administrative Claims representing costs incurred in the ordinary course of business and not yet paid will be paid by the Debtor on the date such debt is due. Payments owed to the United States Trustee will be paid in the ordinary course when due. Applications for payment of administrative expenses not described above will be paid on the later of (i) the Effective Date and (ii) as soon as practicable after allowance by the Bankruptcy Court. Applications for payment of administrative expense must be filed and served no later than thirty (30) days after the Confirmation Date.

C. **Priority Tax Claims**

Allowed priority tax Claims will be paid in monthly installments over 60 months at a statutory interest rate with the first payment beginning on the later of (i) the Distribution Date and (ii) the date such Claim becomes an Allowed Claim.

**D. Professional Fee Claims**

Allowed Claims of Debtor's professionals will be paid on the later of (i) the Effective Date of the Plan and (ii) the date such Claim becomes an Allowed Claim; or as otherwise agreed between the professional and the Reorganized Debtor.

**E. Classification and Treatment of the Claims and Equity InterestsSummary**

A summary of the treatment of the classified claims is as follows:

<b>Class/Type of Claim or Equity Interest</b>	<b>Treatment</b>	<b>Impairment/Voting Rights</b>
Class 1: Secured Claim IRS	Monthly payments over 84 months at 4% per annum interest	Impaired, entitled to vote
Class 2: Secured Claim IDR	Monthly payments over 84 months at 4% per annum interest	Impaired, entitled to vote
Class 3: Secured Claim Semo	Current agreements with Semo will be modified to extend to a five year repayment at interest rate resulting in a \$19,000 monthly payment with purchase option.	Impaired, entitled to vote
Class 4: Allowed Other Secured Claims	As determined by claimant and Reorganized Debtor	Unimpaired, Deemed to accept; not entitled to vote
Class 5: Allowed Other Unsecured Priority Claims	Paid at the Effective Date or when allowed or as agreed	Unimpaired, Deemed to accept, not entitled to vote
Class 6: Claim of General Truck Leasing	Paid either (a) \$106,984.60 or (b) agreed purchase price of leased trucks	Impaired, entitled to vote
Class 7: General Unsecured Claims	No Distribution	Impaired; Deemed to reject; not entitled to vote.
Class 8: Equity Interests	All Equity Interests will be cancelled	Impaired; Deemed to reject, not entitled to vote

**2. Treatment of Claims and Equity Interests on the Effective Date**

**F. Means For Funding and Implementing the Plan**

On the Effective Date, United Dairy Group, LLC (“Investor”) will contribute funds (“Investment”) that when added to the cash of the Debtor are sufficient to pay the administrative claims, professional fee claims, and any other amounts due as of the Effective Date under the Plan. In any case, the Investment will not be less than \$100,000. The current equity interests in the Debtor will be cancelled and new equity interests will be issued to the Investor in exchange for the Investment. The payments due on and after the Effective Date will be funded by the continued operations of the Reorganized Debtor.

**G. Distribution of Property and Administration of the Plan**

**1. Vesting of Property in Reorganized Debtor**

Except as otherwise provided in the Plan, all of the assets, properties and rights of the Debtor owned by the Debtor of every type and description, tangible, intangible, wherever located, except for those funds to be paid by the Debtor before the Effective Date, shall be transferred and automatically vested in Reorganized Debtor as of the Effective Date free and clear of all liens, claims, rights of setoff, security interests, pledges, encumbrances, adverse rights of interest, covenants, charges, debts and contractually imposed restrictions, and all such liens, claims, rights of setoff, security interests, pledges, encumbrances, adverse rights of interest, covenants, charges, debts and contractually imposed restrictions, except such liens as are expressly provided in the Plan. Moreover, all Causes of Action of the Debtor (under any theory of law or equity, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Chapter 11 Case, but excluding any Causes of Action specifically released in the Plan shall be transferred on the

Effective Date to Reorganized Debtor. Reorganized Debtor shall then have the right to commence and pursue all Causes of Action (except as otherwise noted above and provided in the Plan).

## **2. Organizational Authorization**

The entry of the order confirming the Plan shall constitute authorization for the Debtor and the Reorganized Debtor to take or cause to be taken all organizational action necessary and appropriate to consummate and implement the Plan prior to and after the Effective Date and all such organizational actions taken or caused to be taken shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to applicable non-Bankruptcy law and the Bankruptcy Code, without any requirement of further action by the Debtor. On or before the Effective Date, the Debtor and the Reorganized Debtor shall be authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan.

### **H. Executory Contracts**

Except as otherwise provided in the Plan effective on and as of the Effective Date any and all Executory Contracts that exist on the Confirmation Date between Debtor and any party that are not listed on Exhibit A to the Plan, shall be rejected; *provided, however*, that Debtor shall have the right, at any time prior to the Confirmation Date, to amend Exhibit A to add or delete any Executory Contract listed therein, thus providing for its rejection or assumption. The Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute an order of the Bankruptcy Court approving such assumption or rejection as of the Confirmation Date, but subject to the Effective Date pursuant to §§ 365 and 1123(b)(2) of the Bankruptcy Code.

Reorganized Debtor will satisfy all undisputed cure and any other monetary defaults payments required by § 365(b)(1) of the Bankruptcy Code under any Executory Contract identified on Exhibit A to the Plan (as may be modified in accordance with § 4.1 of the Plan), to the extent any such Executory Contract is in default (and to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law), or the counterparty to such Executory Contract has not waived any monetary amounts arising prior to the Petition Date, by the payment of such undisputed cure amounts as agreed to by Reorganized Debtor and the counterparty to the Executory Contract or as determined by Final Order of the Bankruptcy Court. Executory Contract cure obligations, if not previously determined by an order of the Bankruptcy Court prior to the Effective Date, may be paid without further order of the Bankruptcy Court if such cure amounts are agreed to by Reorganized Debtor and the counterparty to such Executory Contracts. To the extent Reorganized Debtor and the counterparty to an Executory Contract cannot agree as to a particular cure amount, then such amounts will be determined by the Bankruptcy Court after notice and a hearing.

**I. Management of the Debtor**

The Investor will employ Mr. Willemsen as the operations management of the Debtor for both the trucking and consulting services. All accounting and financial operations will be moved to the Investor's control. Mr. Willemsen will be compensated under an agreement to be negotiated between the Investor and Mr. Willemsen. Mr. Willemsen will not retain any ownership interest in the Debtor as of the Effective Date.

**J. Objections to Claims**

The Debtor and/or Reorganized Debtor shall have the right to file objections to Claims through and including sixty (60) days following the Effective Date.

K. **Provisions for Classes Which Are Impaired and Do Not Accept the Plan**

Under the Bankruptcy Code, Claims in Classes which are impaired are entitled to vote on the Plan, unless the Holder of such a Claim is an insider or such Class shall not retain nor receive any property on account of its Prepetition Claim or Equity Interest. Classes 1, 2, 3, 6, 7, and 8 are impaired. Classes 1, 2, 3, and 6 may vote under the Plan. Classes 7 and 8 will not receive any distributions and are deemed to reject the Plan. Classes 4 and 5 are unimpaired and are deemed to accept the Plan.

The Plan provides that the Bankruptcy Court will retain jurisdiction over the Chapter 11 Case after Confirmation for various purposes as detailed in Article XI of the Plan.

L. **Amendment, Modification or Revocation of the Plan** The Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Reorganized Debtor may, upon notice, or hearing and an order of the Bankruptcy Court, amend or modify the Plan in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim or Equity Interest that is deemed to have accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

M. **Discharge of the Debtor**

Except as otherwise provided in § 1141(d), the Plan, or the Confirmation Order, as of the Effective Date, Confirmation of the Plan shall discharge the Debtor from any debt that arose before the Effective Date and any debt of a kind specified in §§ 502(g), (h) or (i) of the Bankruptcy Code.

**V. LIQUIDATION ANALYSIS**

Holders of Claims in impaired Classes will receive a distribution under the Plan greater than they would receive under a chapter 7 forced liquidation sale. A liquidation analysis will be provided on or before the Disclosure Statement Exhibit Filing Date.

## **VI. CONFIRMATION OF THE PLAN**

### **A. Acceptance of the Plan**

The Debtor is seeking confirmation of the Plan under 1129(b). The Bankruptcy Code defines acceptance of the Plan by a Class of creditors as acceptance by creditors holding two-thirds (2/3) in dollar amount and a majority in number of the Claims in such Class (other than any such creditor designated under § 1126(e) of the Bankruptcy Code), but for that purpose only counts those creditors that actually cast ballots. Holders of Claims or Equity Interests that fail to vote are not counted as either accepting or rejecting the Plan.

### **B. Voting Claims Subject to a Pending Objection**

If the Debtor has objected to the Claim of a creditor, the Holder of such Disputed Claim is not entitled to vote on the Plan absent further order of the Bankruptcy Court estimating the Claim for voting purposes.

### **C. Fair & Equitable**

To confirm the Plan, the Bankruptcy Court must find that the Plan does not discriminate unfairly and is fair and equitable to Classes that are impaired and have not accepted the Plan. With respect to a class of unsecured creditors, the Plan is fair and equitable if no classes junior in priority will retain or receive any property or on account of their claim or interest.

### **D. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. For the purposes of showing the Plan meets this feasibility standard, the Debtor analyzed the Reorganized Debtor's ability to meet its obligation under the Plan and to retain sufficient liquidity and capital resources to conduct its business. The Debtor believes that the projections to

be provided as an Exhibit to this Disclosure Statement on or before the Disclosure Statement Exhibit Filing Date demonstrate that the Debtor and Reorganized Debtor will be able to make the distributions required under the Plan and operate as a going concern.

*Risks Affecting the Debtor and Reorganized Debtor Business.* The feasibility of the Plan and the supporting projections inherently rely on educated assumptions and projected data. There are variables however that the Debtor and Reorganized Debtor cannot control which may affect the Debtor's circumstances prior to Confirmation and Reorganized Debtor's performance under the Plan. These variable risks generally include: (i) vulnerability to the U.S. economy and the varying economic and costs cycles within the industry, in particular the cost of fuel and the sale price of milk; and (ii) the Reorganized Debtor's ability to meet its financial projections. While the Debtor believes in good faith its financial projections, including projected revenues and cash flows, are currently both appropriately conservative and achievable, if the Reorganized Debtor is unable to meet its projected financial results or achieve projected revenues and Cash flows, the Reorganized Debtor could become unable to service its debt obligations as they come due or meet the Reorganized Debtor's operational needs.

## **VII. TAX CONSEQUENCES OF THE PLAN**

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the Internal Revenue Service or an opinion of counsel concerning same.

**ACCORDINGLY, ANY PERSONS WHO MAY BE AFFECTED BY IMPLEMENTATION OF THE PLAN, INCLUDING CREDITORS AND EQUITY INTEREST HOLDERS OF THE DEBTOR, SHOULD CONSULT THEIR OWN TAX ADVISORS RESPECTING THE TAX CONSEQUENCES UNDER FEDERAL AND ANY APPLICABLE STATE, COMMONWEALTH, LOCAL OR FOREIGN LAW.**

**VIII. CONCLUSION**

The Debtor believes that the Plan represents the best alternative for the Debtor, the Estate, and its creditors. The Debtor urges all creditors entitled to vote to return their ballots accepting the Plan.

DATED: December 11, 2017

EVERMILK LOGISTICS, LLC,  
as Debtor and Debtor-in-Possession,

By: /s/ Teunis Jan Willemsen  
Manager/Member

Submitted for filing by:

Terry E. Hall  
Faegre Baker Daniels LLP  
Counsel to the Debtor